

Authority: Ontario Land Tribunal Decision and Order  
issued on August 25, 2021 in File PL171281

## CITY OF TORONTO

### BY-LAW 767-2021(OLT)

**To amend former City of Toronto Zoning By-law 438-86, as amended, with respect to the lands municipally known in the year 2018 as 33 Rosehill Avenue and 44 Jackes Avenue.**

Whereas the Ontario Land Tribunal, by its Decision and Order issued on August 25, 2021, in OLT Case PL171281 approved amendments to the City of Toronto Zoning By-law 438-86, as amended, with respect to the lands municipally known in the year 2018 as 33 Rosehill Avenue and 44 Jackes Avenue; 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 provisions 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 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 the facilities, services or 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 the density or height permitted beyond that otherwise permitted on the aforesaid lands by By-law 438-86, as amended, are to be permitted in return for the provision of the facilities, services and matters set out in this By-law, and are to be secured by one or more agreements between the *owner* of such lands and the City of Toronto; and

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

By-law 438-86, as amended, of the former City of Toronto is further amended by the Ontario Land Tribunal as follows:

1. Pursuant to Section 37 of the Planning Act, the heights and density of development permitted by this By-law on the lands shown on Map 1 of this By-law are permitted subject to compliance with conditions set out in this By-law, and in return for the provision by the owner of the lands shown on Map 1 of this By-law, the facilities, services and matters set out in Appendix 1 hereof, the provision of which shall be secured by one or more agreements with the City pursuant to Section 37(3) of the Planning Act.

2. Where Appendix 1 of this By-law requires the owner to provide certain facilities, services or matters prior to the issuance of an above grade building permit, the issuance of such permit shall be dependent on satisfaction of same.
3. 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 Appendix 1 are satisfied and an agreement pursuant to Section 37(3) of the Planning Act is registered on title to the lands to the satisfaction of the City Solicitor.
4. The provisions of By-law 438-86, as amended, shall continue to apply to the lands outlined by heavy lines on Map 1 of this By-law, except as otherwise provided herein.
5. The provisions of this By-law shall apply to the lands outlined by heavy lines on Map 1 attached.
6. None of the provisions of Sections 2(1) with respect to the definition of *grade*, *height*, *residential amenity space* and *residential gross floor area*, and Sections 4(2), 4(4)(b), 4(6), 4(10), 4(11), 4(12), 4(13), 4(16), 6(3) Part I, 6(3) Part II, 6(3) Part IX 1.(b) of Zoning 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 *apartment buildings* or *accessory* structures on the *lot* and uses *accessory* thereto, provided that:
  - (A) The *lot* consists of the lands delineated by heavy lines on Map 1 attached to this By-law;
  - (B) *Building B* may only be used as *residential amenity space* for residents and visitors of the *lot*;
  - (C) Notwithstanding any provision of this By-law or By-law 438-86, as amended, to the contrary, any buildings, structures and uses, including the *Existing Buildings* existing at the time of the passing of this By-law are permitted, subject to alterations and internal modifications subject to (E)(i) below;
  - (D) In a building that has existed on the *lot* since May 27, 1963, office is permitted if it is:
    - (i) A medical office;
    - (ii) An office of a professional person;
    - (iii) An office of a non-profit organization; or
    - (iv) A business administration office;

- (E) The total *gross floor area* of all buildings and structures is limited to the following:
- (i) The total *gross floor area* of the *Existing Buildings* is as existing at the time of the passing of this By-law, plus any alterations and internal modifications thereto, up to a combined maximum *gross floor area* of 300 square metres; and
  - (ii) The total *gross floor area* of *Building A* and *Building B* shall not exceed 23,000 square metres;
- (F) The *gross floor area* of the *Existing Buildings* as existing on the *lot* at the time of the passing of this By-law, may be further reduced by the area in each building used for a garbage chute room, including exterior walls enclosing such room, having a maximum area of 35 square metres;
- (G) The calculation of *gross floor area* does not include the areas occupied by any non-structural architectural grid-system or ornamental features that are attached to and project from the main wall of a building, or any areas that are partially enclosed by such;
- (H) A maximum of 265 *dwelling units* shall be permitted in *Building A* of which:
- (i) A minimum of 50 percent of the total number of *dwelling units* in *Building A* shall have two or more bedrooms; and
  - (ii) A minimum of 10 percent of the total number of *dwelling units* in *Building A* shall have three or more bedrooms;
- (I) A maximum of 629 *dwelling units* shall be permitted cumulatively in the two *Existing Buildings*;
- (J) No part of a building or structure shall exceed the *height* limits in metres, inclusive of mechanical penthouse, as specified by the numbers following the symbol "HT" as shown on the attached Map 2, with the exception of the following:
- (i) Lighting fixtures;
  - (ii) Awnings, canopies, parapets, chimneys, vents, ducts, stacks, pipes, mechanical and ventilation equipment, guardrails, landscape and public art features, planters, trellises, decks, platforms, terraces, railings, retaining walls, screens, stairs, stair enclosures, ramps, underground garage ramps and their associated structures, bicycle racks, bollards, wind protection, and window washing equipment, all of which may project up to a maximum of 4.0 metres;

- (iii) Despite (ii) above, a canopy or roof overhang which projects from the main walls of *Building A* may project a maximum of 9.0 metres;
  - (iv) Elevator machine room and overruns, each of which may project up to a maximum of 6.0 metres;
  - (v) Structures on any roof used for outside or open air recreation, including *residential amenity space*, and for maintenance, safety, wind or green roof purposes, all of which may project up to a maximum of 3.0 metres; and
  - (vi) Structures, elements and enclosures permitted by (K) below;
- (K) No portion of any building or structure above finished ground level is located other than wholly within the areas delineated by heavy lines on Map 2 attached to this By-law, with the exception of the following:
- (i) Awnings, canopies, roof over-hangs, cornices, eaves, elevator machine room and overruns, railings, stairs, stair enclosures, window sills, window washing equipment to a maximum of 4.0 metres;
  - (ii) Architectural or ornamental features/panels, and cladding, all of which may project up to a maximum of 0.5 metres beyond the main walls of *Building A*;
  - (iii) Balconies up to a maximum of 2.0 metres; and
  - (iv) Structures, elements and enclosures permitted by (J) above;
- (L) Non-structural architectural grid-system, architectural or ornamental features/panels, and cladding permitted by (K)(ii) above, including the areas that may be fully or partly enclosed by such features, are not main walls;
- (M) *Residential amenity space* shall be provided on the lot for *dwelling units* in *Building A* in accordance with the following:
- (i) A minimum of 2.0 square metres of indoor *residential amenity space* per *dwelling unit* must be provided within *Building A* in a multi-purpose room or rooms, whether or not such rooms are contiguous and one of which must contain a kitchen and a washroom;
  - (ii) A minimum of 1.0 square metres of outdoor *residential amenity space* per *dwelling unit* must be provided of which a minimum of 40 square metres must be provided in a location directly accessible from an area containing indoor *residential amenity space* within *Building A*; and
  - (iii) Pet friendly amenities and bicycle/stroller wash rooms are included in the calculation of *residential amenity space*;

- (N) *Parking spaces* shall be provided and maintained on the *lot* for *Building A* and the *Existing Buildings* as follows:
- (i) A minimum of 0.39 *parking spaces* per *dwelling unit* shall be provided for residents; and
  - (ii) A minimum of 0.1 *parking spaces* per *dwelling unit* shall be provided for visitors;
- (O) During the period following the issuance of the first building permit for *Building A* or *Building B* and prior to occupancy of *Building A*, of the *parking spaces* required in accordance with (N) above, up to 100 *parking spaces* may be provided on lands abutting the *lot*, as such *parking spaces* and access thereto exist on the abutting lands as of January 1, 2021;
- (P) Any *parking spaces* and drive aisles existing as of the date of the passing of this By-law are permitted and are deemed to comply;
- (Q) If the calculation of the number of required *parking spaces* 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*;
- (R) *Bicycle parking space* requirements for *Building A* are as follows:
- (i) A minimum of 0.9 bicycle parking spaces – occupant per dwelling unit; and
  - (ii) A minimum of 0.1 bicycle parking spaces – visitor per dwelling unit;
- (S) A minimum of 150 *bicycle parking spaces - occupant* must be provided for the *Existing Buildings* prior to occupancy of *Building A*;
- (T) A minimum of 16 *bicycle parking spaces - visitor* must be provided for the *Existing Buildings* prior to occupancy of *Building A*;
- (U) No *bicycle parking spaces - occupant* or *bicycle parking spaces - visitor* are required for office uses;
- (V) The *bicycle parking spaces - occupant* required by subsections (R) and (S) above may be provided in the form of *stacked bicycle parking spaces*;
- (W) One *loading space – type G* shall be provided and maintained on the *lot* for *Building A*;
- (X) Any loading spaces on the *lot* serving the *Existing Buildings*, existing as of the date of the passing of this By-law, that has dimensions that are lesser than the minimum required, such loading space is permitted and are deemed to comply;

- (Y) Any driveway or passageway providing access to a loading space, as existing at the time of the passing of this By-law are deemed to comply;
- (Z) None of the provisions of this By-law as amended, or By-law 438-86, as amended, apply to prevent a temporary sales office on the *lot*, which means a building, structure, facility, trailer or portion thereof used exclusively for the purpose of the initial sale, lease or rental of *dwelling units* in *Building A*;
- (AA) For the purposes of this By-law, every other word or expression which is italicized herein shall have the same meaning as each word or expression as defined in the aforesaid Bylaw 438-86, as amended, with the exception of the following:
- (i) "*Building A*" and "*Building B*" means the buildings or portions of a building on the *lot* shown as *Building A* and *Building B* on Map 2;
  - (ii) "*Existing Buildings*" means the existing *apartment buildings* municipally known as 33 Rosehill Avenue and 44 Jackes Avenue as shown on Map 2, and *accessory* structures, including an underground *parking garage* and enclosed garage entry ramp as located on the *lot* at the time of the passing of this By-law;
  - (iii) "*grade*" means the Canadian Geodetic Datum of 139.20 metres;
  - (iv) "*height*" means the vertical distance between *grade* and the highest point of the building or structure, except for those elements prescribed in this By-law;
  - (v) "*lot*" means the lands outlined by heavy lines on Map 1 of this By-law;
  - (vi) "*residential amenity space*" means an indoor or outdoor space on a *lot* that is communal and available for use by the occupants of a building on the *lot* for recreational or social activities and may also be available for use by guests and visitors to a building;
  - (vii) "*gross floor area*" means the sum of the total area of each floor level of a building or structure, above and below the ground, measured from the exterior of the main wall of each floor level, and reduced by the area in the building used for:
    - (1) parking, loading and bicycle parking below *grade*;
    - (2) required loading spaces and required *bicycle parking spaces* at or above *grade*;
    - (3) storage rooms, washrooms, electrical, utility, mechanical and ventilation rooms in the *basement*;

- (4) shower and change facilities required by this By-law for required *bicycle parking spaces*;
  - (5) indoor *residential amenity space* required by this By-law;
  - (6) elevator shafts;
  - (7) garbage shafts;
  - (8) mechanical penthouse; and
  - (9) exit stairwells in the building;
- (viii) "*stacked bicycle parking spaces*" 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*, with a minimum vertical dimension of 1.2 metres;
- (BB) Where there is a conflict between the provisions of this Exception and By-law 22195, the provisions of this Exception prevail; and
- (CC) If the requirements of Appendix 1 are complied with, Section 12(2) 262 and By-law 22195 do not apply as a Prevailing Section and Prevailing By-law.
7. 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.

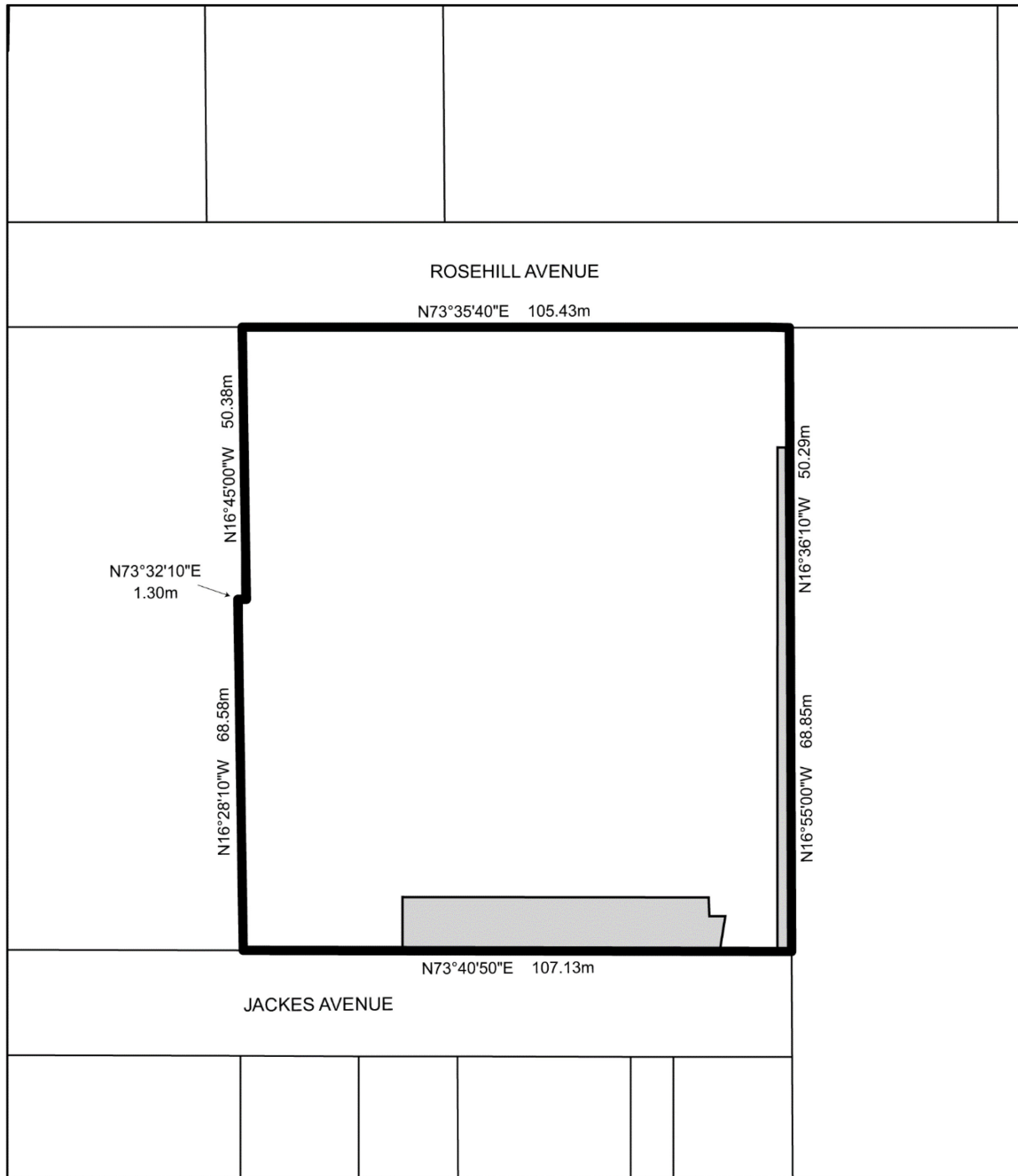
Pursuant to the Ontario Land Tribunal Decision and Order issued on August 25, 2021 in File PL171281.

**APPENDIX 1**  
**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 Map 1 of this By-law, subject to and as secured in a registered agreement or agreements under Section 37(3) of the Planning Act whereby the owner agrees as follows:

1. Payment of a cash contribution in the amount of \$3.7 Million prior to the issuance of the first above-grade building permit to be allocated to certain community benefits in the vicinity of the lands within the boundaries of Ward 12; with the allocation of such funds to be determined by the Chief Planner and Executive Director, City Planning in consultation with the Ward Councillor;
2. In the event the cash contribution referred to 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 Ward Councillor, provided that the purpose is identified in the Official Plan and will benefit the community in the vicinity of the lands;
3. The above noted cash contribution shall be indexed upwardly in accordance with the Statistics Canada Non-Residential Construction Price Index for Toronto, calculated from the date of the agreement or agreements to the date of payment;
4. The following matters are to be secured in the agreement or agreements as a legal convenience to support development:
  - a. conveyance of 761 square metres to the City for public parkland purposes, prior to the issuance of the first above grade building permit for the residential development, not including building permits for the amenity pavilion, subject to conditions as set out in the agreement or agreements;
  - b. a minimum of 10 percent of the new residential dwelling units shall contain 3 or more bedrooms;
  - c. improvements to the lands to benefit the tenants of the existing buildings as set out below, and where the costs of the development shall not be passed on to the tenants by way of an Above Guideline Rent Increase application:
    - i. construct a new amenity pavilion with an indoor pool, steam room and change areas, (which may or may not include a hot tub as determined by the owner), having a minimum gross floor area of 520 square metres and substantially in accordance with the amenity pavilion plans prepared by Hariri Pontarini Architects dated May 3, 2019, as revised on December 1, 2020, prior to the issuance of the first above-grade building permit and, in the event that the existing outdoor pool is removed prior to the construction of the new amenity pavilion, the owner agrees that the

- existing pool shall only be removed for a maximum of one summer season and if such removal occurs, the owner shall make available swimming pool passes to existing tenants for such summer season at a local community pool;
- ii. renovate and expand the existing ground floor exercise/fitness room at 44 Jackes Avenue substantially in accordance with Drawing A311 prepared by Hariri Pontarini Architects, dated February 20, 2018, prior to the issuance of the first Above-Grade Building Permit;
  - iii. renovate the existing Ground Floor multi-purpose/party room and lobby at 44 Jackes Avenue, and renovate the existing lobby at 33 Rosehill Avenue, substantially in accordance with Drawing A311 prepared by Hariri Pontarini Architects, dated February 20, 2018, prior to the issuance of the First Above-Grade Building Permit;
  - iv. provide an accessible common laundry room at 44 Jackes Avenue, the provision of which is acknowledged to have been constructed; and
  - v. improve and enhance existing bicycle storage areas substantially in accordance with the plans prepared by Hariri Pontarini Architects, dated February 20, 2018;
- d. the owner shall provide and maintain the existing 629 dwelling units at 44 Jackes Avenue and 33 Rosehill Avenue as rental housing for the period 20 years, from the date of this By-law comes into full force and effect;
  - e. the owner shall develop a Construction Mitigation Plan prior to the issuance of the first below grade building permit for the proposed development of the lands to the satisfaction of the Chief Planner and Executive Director, City Planning; and
  - f. the owner shall develop a Tenant Communication Plan prior to the issuance of the first below building permit for the proposed development of the lands to the satisfaction of the Chief Planner and Executive Director, City Planning.

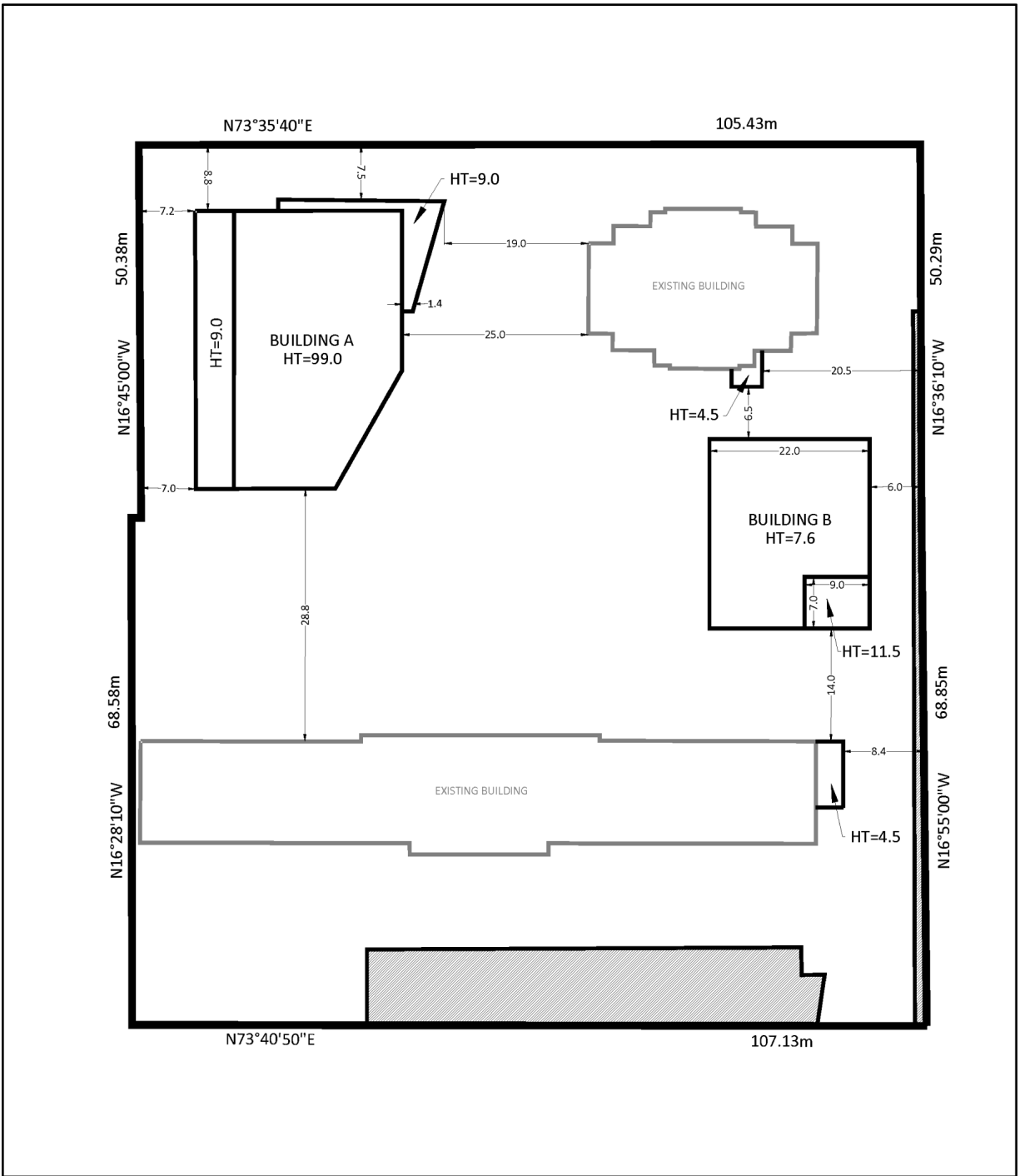


### 33 Rosehill Avenue & 44 Jackes Avenue

File #: 16 255319 STE 22 OZ


 Area Of Parkland Dedication


  
City of Toronto By-law 438-86  
Not to Scale  
07/26/2021



### 33 Rosehill Avenue & 44 Jackes Avenue

File #: 16 255319 STE 22 OZ

 Area Of Parkland Dedication

  
City of Toronto By-law 438-86  
Not to Scale  
07/26/2021