

Authority: Toronto and East York Community Council
Item TE34.18, adopted, as amended, by City of Toronto
Council on July 19, 20, 21 and 22, 2022

CITY OF TORONTO

BY-LAW 817-2022

To amend By-law 367-2019(OMB), being a by-law to amend former City of Toronto Zoning By-law 438-86, as amended, with respect to the lands municipally known as 390-444 Dufferin Street and 41 Alma Avenue.

Whereas the Ontario Municipal Board by Decisions issued June 30, 2015 and June 28, 2016, upon hearing an appeal under Section 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended, enacted By-law 367-2019 (OMB) amending By-law 438-86 for the former City of Toronto with respect to lands municipally known as 390-444 Dufferin Street and 41 Alma Avenue; and

Whereas authority is given to Council by Section 34 of the Planning Act, R.S.O. 1990, c. P.13, as amended, to pass this By-law; and

Whereas Council of the City of Toronto has provided adequate information to the public and has held at least one public meeting in accordance with the Planning Act; 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 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 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 land and the City of Toronto wish to amend the requirements of Zoning By-law 367-2019(OMB) that set out the provision of facilities, services and matters pursuant to Section 37 of the Planning Act; 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, are to be permitted in return for the provision of the facilities, services and matters set out in this By-law which are secured by one or more agreements between the owner of the land and the City of Toronto;

The Council of the City of Toronto enacts:

1. Appendix 1 Section 37 Provisions to Zoning By-law 367-2019(OMB) is deleted and replaced by the following:

APPENDIX 1
SECTION 37 PROVISIONS

The facilities, services and matters set out herein are required to be provided by the owner 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 on Map 1 of this By-law and secured in accordance with an agreement or agreements pursuant to Section 37(1) of the Planning Act, whereby the owner agrees as follows:

1. The owner will provide a minimum of 5,550 square metres of non-residential gross floor area in the building on Block B to be used as workspace.
2. The owner shall, at the sole discretion of the Chief Planner and Executive Director of City Planning, in consultation with the local Councillor, City Solicitor and Executive Director of Corporate Real Estate Management, either:
 - a. prior to Site Plan Approval, provide to the City a cash payment in the amount of \$2,416,451.00, of which:
 - i. \$500,000.00 is to be allocated towards the Cultural Space at 32 Lisgar Street, provided that in the event the \$500,000.00 is not used for the purpose of the Cultural Space at 32 Lisgar Street within 3 years of this Zoning By-law Amendment coming into full force and effect, the \$500,000.00 may be allocated in the same fashion and for the same purposes as the funds in Section 2 a. (ii) below; and
 - ii. \$1,916,451.00 is to be allocated towards services or facilities that will benefit the community in the vicinity of the lands, at the discretion of the Chief Planner in consultation with the Ward Councillor; or
 - b. enter into a 25 year lease with the City for approximately 1,350 square metres of workspace, being all of the leasable workspace on the ground and second storeys of the building on Block B, to be used by the City to establish a small business incubation centre in the building.
3. In the event that owner and City enter into the lease referred to in 2b above, the owner acknowledges and agrees that:
 - a. The owner consents to the City subleasing the workspace to qualified not-for-profit partners or a post-secondary institution that will operate the space and deliver the small business incubation programming.

- b. For the term of the 25 year lease the City shall pay rent at a rate of \$6.50/square foot below market rent for light industrial space, assuming that is what the City is using the space for, plus T.M.I., and market rent shall be based on market rent for similar uses in a similar building in a similar area.
 - c. The City shall have the opportunity to renew the lease at the end of the 25 year term at market rental rates.
 - d. For the purposes of calculating the rate of market rent in Section 3 b. above, an appraisal of the leased space will be conducted at the beginning of the lease, and at the beginning of every 5 years thereafter, so that the rent would be adjusted every 5 years based on changes to market rent. For this purpose the City shall provide an appraisal of the leased space and if the City and the owner are unable to agree on the value of the market rental rate both parties shall appoint a mutually agreeable third party appraiser, at the owner's expense, whose appraisal shall be binding for the purpose of determining the applicable market rental rate.
 - e. The owner shall finish the leased workspace to base condition which shall include concrete floors, electrical, HVAC, plumbing and fire services entering the space, a finished washroom but otherwise no partitioning or dry-wall. In addition, the owner shall provide a cash payment to the City in the amount of \$300,000.00 to be used by the City toward finishing said space.
 - f. The lease will contain a termination clause, effective at the 10th year of the lease and every 5 years thereafter, to allow the City to elect to cease leasing the space and take any pro-rata remaining Section 37 funds (to be based upon \$2,200,000.00 indexed from the date of the Section 37 Agreement, less the \$300,000.00 payment referred to in Section 3 e. above and less all discounted rents already accrued to the City). Those funds shall be used towards other local community benefits at the discretion of the Chief Planner in consultation with the Ward Councillor.
4. A minimum of 10 percent of the dwelling units on the lot shall contain at least three bedrooms meeting the definition of bedroom in the Ontario Building Code.

Enacted and passed on July 22, 2022.

Frances Nunziata,
Speaker

John D. Elvidge,
City Clerk

(Seal of the City)