

Authority: Ontario Land Tribunal Decision and Interim
Order issued on October 15, 2021 and Ontario Land
Tribunal Order issued on August 12, 2022 in File OLT-22-
004047 (formerly PL200215)

CITY OF TORONTO

BY-LAW 1254-2022(OLT)

To amend former City of Toronto Zoning By-law 438-86, as amended, with respect to the lands municipally known in the year 2022 as 40-44 Broadway Avenue.

Whereas the Ontario Land Tribunal pursuant to its Decision/Order issued on October 15, 2021 and Order issued August 12, 2022 in File OLT-22-004047 (formerly File PL200215) 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 as 40-44 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 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/or 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 Ontario Land Tribunal, By-law 438-86, the Zoning By-law 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 by this By-law are permitted subject to compliance with the conditions set out in this By-law and in return for the provision by the Owner of the site of the facilities, services and matters set out in Appendix 1 of this By-law the provisions of which shall be secured by an agreement or agreements pursuant to Section 37(3) of the Planning Act.

2. Upon execution and registration of an agreement or agreements with the Owner of the site, pursuant to Section 37 of the Planning Act, securing the provision of the facilities, services and matters set out in Appendix 1 of this By-law, the site 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 said requirements.
3. Except as otherwise provided herein, the provisions of By-law 438-86, as amended shall continue to apply to the *lot*.
4. None of the provisions of Section 2(1) with respect to the definitions of *bicycle parking space – occupant*, *bicycle parking space – visitor*, *building depth*, *grade*, *height*, *lot*, *non-residential gross floor area* and, *residential gross floor area* and Sections 4(2)(a), 4(4)(b), 4(6)(c), 4(12), 4(13), 4(16), 4(17), 6(1), 6(2), 6(3) Part I (1), 6(3) Part II, and 6(3) Part III, 12(2)118, and 12(2)119 of 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", apply to prevent the erection and use of an *apartment building* containing *dwelling units*, a *place of worship*, *place of assembly*, *dwelling rooms*, a *commercial parking garage* located below grade, and the premises of a *charitable institution* or *non-profit institution* and *accessory* uses on the *lot*, including a *temporary sales/leasing office* provided that:
 - (A) The *lot* comprises all of the lands delineated by dashed lines on Map 1 attached to and forming part of this By-law;
 - (B) The total *residential gross floor area* on the lot shall not exceed 27,000 square metres;
 - (C) The total combined *residential gross floor area* and *non-residential gross floor area* on the *lot* shall not exceed 29,600 square metres, of which *institutional uses*, including a *place of worship*, shall have a minimum combined *non-residential gross floor area* of 2,600 square metres which shall be accessible at grade;
 - (D) The provision of *dwelling units* on the lot is subject to the following:
 - i. A minimum of 15 percent of the total number of *dwelling units* must have two or more bedrooms;
 - ii. A minimum of 10 percent of the total number of *dwelling units* must have three or more bedrooms; and
 - iii. If the calculation of the number of required *dwelling units* with two or three bedrooms results in a number with a fraction, the number shall be rounded down to the nearest whole number;

- (E) *Residential amenity space* shall be provided in accordance with the following:
- i. a minimum of 2.0 square metres of indoor *residential amenity space* per *dwelling unit* shall be provided and maintained on the *lot*;
 - ii. a minimum of 2.0 square metres of outdoor *residential amenity space* per *dwelling unit* shall be provided and maintained on the *lot*;
- (F) No part of any *building* or *structure* on the *lot* erected or used above *grade* shall exceed the *height* limits shown in metres as indicated by the numbers following the letters "HT" in the areas delineated by heavy lines on Map 2, attached to and forming part of this By-law, except for the following:
- i. roof drainage, lightning rods, chimneys, and vents may project above the height limits to a maximum of 3.0 metres;
 - ii. architectural features, light fixtures and parapets may project above the height limits to a maximum of 3.0 metres;
 - iii. elevator overruns and associated enclosures, enclosed stairwell, roof access to a maximum of 4.0 metres;
 - iv. window washing equipment may project above the height limits to a maximum of 3.0 metres;
 - v. planters, landscaping features, guard rails, and divider screens on a balcony and/or terrace may project above the height limits to a maximum of 3.0 metres; and
 - vi. trellises, pergolas, awnings and unenclosed structures providing safety or wind protection to rooftop amenity space may project above the height limits to a maximum of 3.0 metres;
- (G) Mechanical penthouse is contained below the maximum building height. A mechanical penthouse may be located on the storey at the top of the building on the same storey as dwelling units;
- (H) No portion of any *building* erected on the *lot* above *grade* shall be 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 the following:
- i. canopies, cornices, eaves, guardrails, landscape and public art features, lighting fixtures, lightning rod, minaret, ornamental or architectural elements, patios, parapets, pipes, planters, platforms, railings, retaining walls, screens, stacks, stairs, stair enclosures, stair landings, steeple, supportive columns, terraces, terrace guards, trellises, underground garage ramps and their associated structures, vents, walkways, wheel chair ramps,

- wind protection, window sills, and window washing equipment to a maximum of 2.5 metres;
- ii. balconies to a maximum of 2.0 metres, except as shown on Map 3; and
 - iii. canopy over the residential entrance to a maximum of 5.0 metres;
- (I) balconies are permitted as follows and as shown on Map 3:
- i. on north face, above 15 metres up to a height of 120.95 metres;
 - ii. on south, east, west faces, above 13 metres up to a height of 120.95 metres;
- (J) *Parking spaces* shall be provided and maintained on the *lot* in accordance with the following requirements:
- i. A minimum of 0.20 *parking spaces* for each *dwelling unit*;
 - ii. A minimum of 5 *parking spaces* dedicated for a *place of worship*;
 - iii. A minimum of 58 *parking spaces* for residential visitors to be shared with a *place of worship*; and
 - iv. A minimum of 1 "car-share *parking space*";
- (K) Accessible *parking space* must be provided as per following minimum requirement:
- i. Of the required *parking spaces* in (L) above, a minimum of 5 *parking spaces* plus 1 *parking space* for every 50 *parking spaces* or part thereof in excess of 100 *parking spaces*, must be accessible *parking spaces*;
- (L) A minimum of one Type "G" loading space and one Type "C" loading space must be provided and maintained on the lot;
- (M) The required *landscaping* area is 25 percent of the lot area, of which 30 percent of the required *landscaping* area must be comprised of *soft landscaping*;
- (N) A strip of *soft landscaping* is not required;
- (O) *Bicycle parking spaces* shall be provided in accordance with the following:
- i. The minimum ratios are as follows:
 - 1. *Bicycle parking spaces – occupant* shall be provided at a rate of 0.9 *bicycle parking spaces* per *dwelling unit*; and

2. *Bicycle parking spaces –visitor* shall be provided at a rate of 0.1 *bicycle parking spaces per dwelling unit*;
- ii. In the event that the calculation of the number of required *parking spaces* or *bicycle parking spaces* results in a number with a fraction, the number shall be rounded down to the nearest whole number;
- (P) *Bicycle parking* may be located as follows:
- i. On the ground floor up to second floor and on all levels below *grade*; and
- ii. Entry to the bicycle parking area does not need to be within 30 metres of the residential entrance;
- (Q) Required "long-term" and "short term" *bicycle parking spaces* may be provided in *stacked bicycle parking spaces* and may be located in a storage room, in a locker, and/or a below-grade parking garage in a *building* on the *lot*;
- (R) Despite any existing or future severance, partition or division of the *lot*, the provisions of this By-law shall apply to the whole of the *lot* as if no severance, partition or division occurred;
- (S) None of the provisions of this By-law apply to prevent a *temporary sales/leasing office* on the *lot* including associated parking.
5. For the purposes of this By-law, all italicized words and expressions have the same meanings as defined in By-law 438-86, as amended, with the exception of the following:
- (A) "*building envelope*" means a building envelope as delineated by heavy lines on Map 2 attached to this By-law;
- (B) "*bicycle parking space - occupant*" means an area that is equipped with a bicycle rack, locker or stacked *bicycle parking space* for the purpose of parking and securing bicycles, and:
- i. where the bicycles are to be parked on a horizontal surface, has a horizontal dimension of at least 0.45 metres by 1.8 metres and a vertical clearance of at least 1.2 metres;
- ii. where the bicycles are to be parked in a vertical position, has a horizontal dimension of at least 0.45 metres by 1.2 metres and a vertical dimension of at least 1.9 metres;
- iii. notwithstanding (i) and (ii) above, where bicycles are to be parked in a stacker, being a device that allows parking spaces to be positioned above or below another with the aid of an elevating mechanism, the parking space within the stacker must have a horizontal dimension of at least

- 0.45 metres by 1.8 metres, and the stacker must be located in an area with a vertical dimension of at least 2.4 metres;
- iv. in the case of a bicycle parking rack, is located in a secure room or area; and
 - v. in the case of a bicycle locker, may contain ancillary storage;
- (C) "*bicycle parking space - visitor*" means an area that is equipped with a bicycle rack, locker or stacked bicycle *parking space* for the purpose of parking and securing bicycles, and:
- i. where the bicycles are to be parked on a horizontal surface, has a minimum length of 1.8 metres, a minimum width of 0.45 metres and a minimum vertical dimension of at least 1.2 metres;
 - ii. where the bicycles are to be parked in a vertical position, has a minimum length or vertical clearance of 1.9 metres, a minimum width of 0.45 metres and a minimum horizontal clearance from the wall of 1.2 metres;
 - iii. where bicycles are to be parked in a stacked bicycle parking space, has a minimum width of 0.45 metres and minimum vertical clearance of 1.2 metres; and
 - iv. may be located outdoors or indoors;
- (D) "*car-share*" means the practice whereby a number of people share the use of one or more motor vehicles that are owned by a profit or non-profit car-sharing organization, such car-share motor vehicles are to be made available for short term rental, including hourly rental. Car-share organizations may require that the carshare motor vehicles be reserved in advance, charge fees based on time and/or kilometers driven, and set membership requirements of the car-sharing organization, including the payment of a membership fee that may or may not be refundable;
- (E) "*car-share parking space*" means a parking space that is exclusively reserved and actively used for car-sharing;
- (F) "*grade*" means 165.25 metres Canadian Geodetic Datum;
- (G) "*green roof*" means an extension to a building's roof that allows vegetation to grow in a growing medium and which is designed, constructed and maintained in compliance with the Toronto Green Roof Construction Standard set out in Chapter 492 of the City of Toronto Municipal Code;
- (H) "*height*" means the vertical distance between *grade* and the highest point of a building or structure, subject to permitted projections expressed herein;

- (I) "*institutional uses*" also includes *dwelling units* and *dwelling rooms* used as *accessory uses* to a *place of worship, place of assembly, charitable institution* or *non-profit institution*, offices, meeting rooms, and library;
- (J) "*lot*" means the lands delineated by heavy lines on Map 1 attached to this By-law;
- (K) "*parking stacked – bicycle*" means a mechanical bicycle parking facility with *bicycle parking spaces* which:
- i. Positioned above each other or another *bicycle parking space*;
 - ii. The platform of such *bicycle parking space* may have dimensions of not less than 0.37 metres by 1.8 metres and a height allowance of 1.2 metres; and
 - iii. May not be readily accessible at all times without maneuvering another bicycle or device;
- (L) "*residential gross floor area*" shall mean the sum of the total areas of each floor level of a building, above and below grade, measured from the exterior of the main wall of each floor level, reduced by the area of the building used for:
- i. Parking, loading and bicycle parking at, above or below ground;
 - ii. Required *loading spaces* at the ground level and required *bicycle parking spaces* at, above or below ground;
 - iii. Storage rooms, washrooms, electrical, utility, mechanical and ventilation rooms in any level of the building;
 - iv. Shower and change facilities required by this By-law for required bicycle parking spaces;
 - v. *Residential amenity space* required and above the requirement of this By-law;
 - vi. Elevator shafts;
 - vii. Garbage shafts;
 - viii. Stair shafts; and
 - ix. Exit stairwells in the building;
- (M) "*non-residential gross floor area*" shall mean the sum of the total areas of each floor level of a building, above and below grade, measured from the exterior of the main wall of each floor level, reduced by the area of the building used for:

- i. Parking, loading and bicycle parking at, above or below ground;
 - ii. Required *loading spaces* at the ground level and required *bicycle parking spaces* at, above or below ground;
 - iii. Storage rooms, washrooms, electrical, utility, mechanical and ventilation rooms in any level of the building;
 - iv. Shower and change facilities required by this By-law for required bicycle parking spaces;
 - v. *Residential amenity space* required and above the requirement of this By-law;
 - vi. Elevator shafts;
 - vii. Garbage shafts;
 - viii. Stair shafts; and
 - ix. Exit stairwells in the building;
- (N) "*temporary sales/leasing office*" means a building, part of a building, structure, facility or trailer on the *lot* used for the purpose of the sale of *dwelling units* to be erected on the *lot* and/or the leasing of any portion of a *mixed-use building* on the *lot*.
6. Nothing within this By-law or By-law 438-86 shall prevent the erection and maintenance of a *temporary sales/leasing office* on the *lot*.
 7. Despite any existing or future severance, partition, division, dedication or conveyance of the *lot*, the provisions of this By-law shall apply to the whole *lot* as if no severance, partition, division, dedication or conveyance occurred.

Ontario Land Tribunal Decision and Interim Order issued on October 15, 2021 and Ontario Land Tribunal Order issued on August 12, 2022 in File OLT-22-004047 (formerly PL200215).

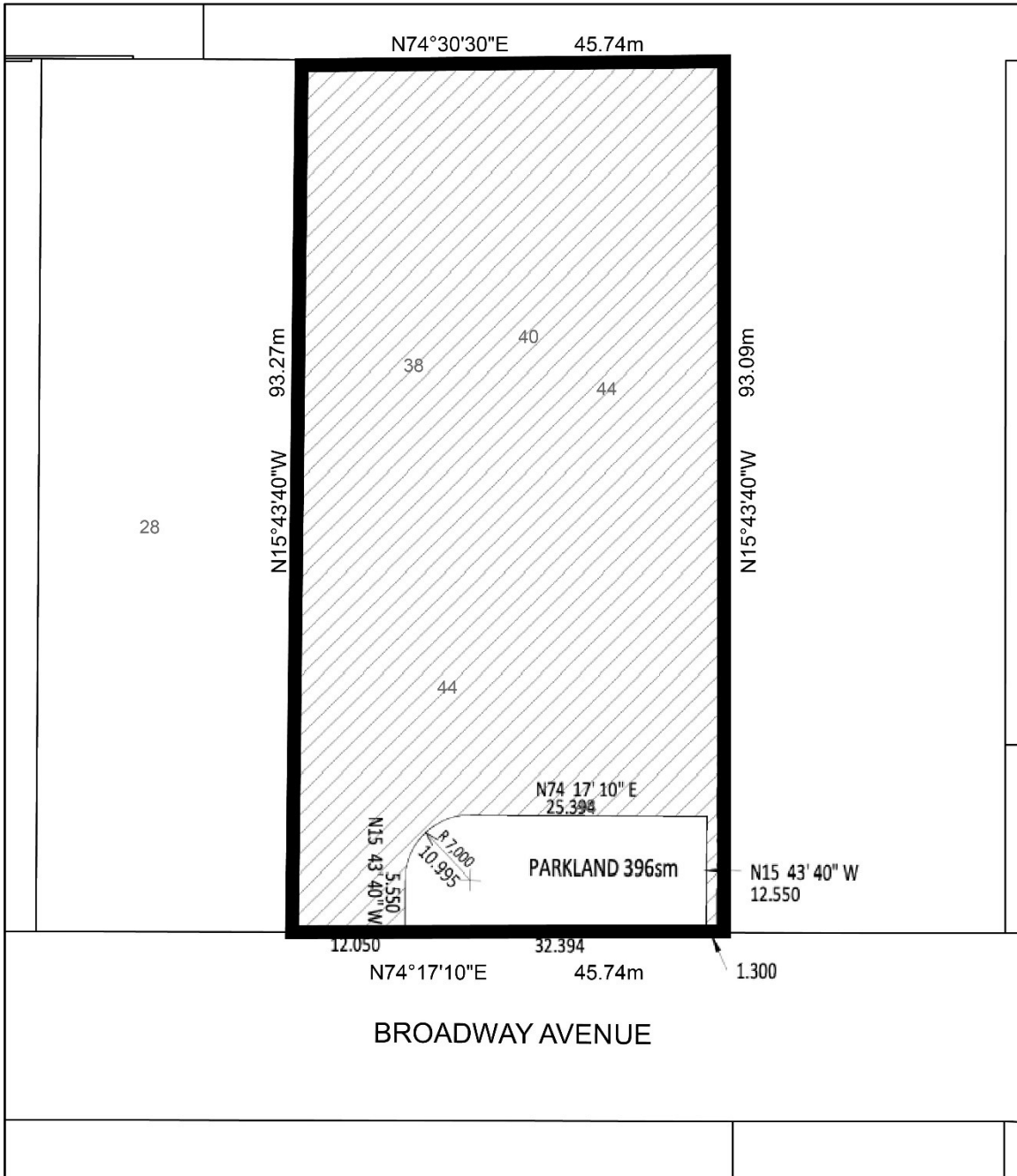
Appendix 1

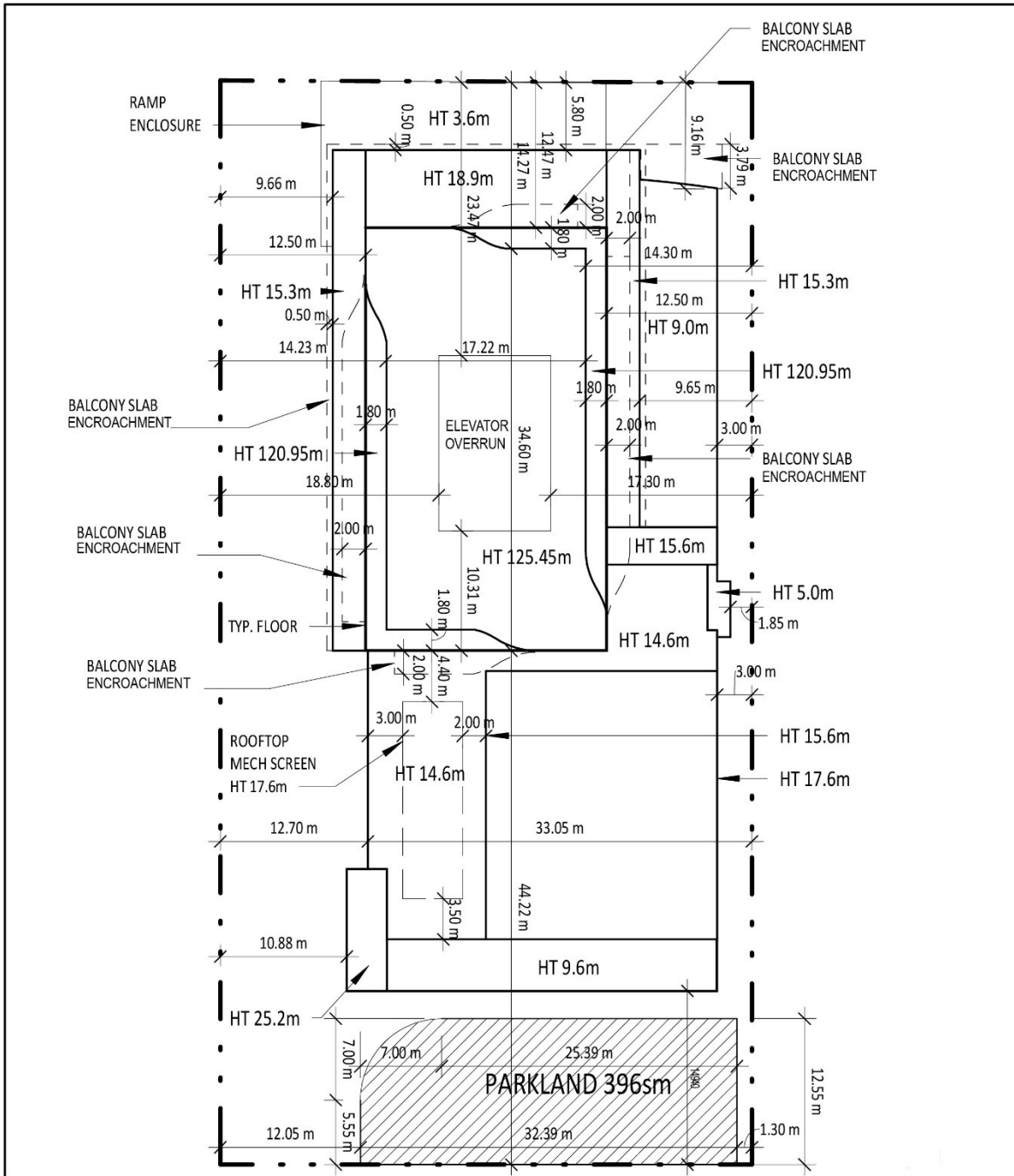
Section 37 Provisions

Prior to the issuance of the first permit issued under the Building Code Act, 1992 in respect of the lands shown on Map 1 attached to this By-law, the owner shall enter into an agreement under Section 37 of the Planning Act as it read on the day before Section 1 of Schedule 17 to the COVID-19 Economic Recovery Act, 2020 came into force, and register same in priority, to the satisfaction of the City Solicitor, whereby the owner agrees to secure the facilities, services and matters set out below which are required to be provided to the City at the owner's expense as follows:

1. Prior to the issuance of the first above-grade building permit for the lands, a cash contribution of \$2,800,000.00 to be paid by the Owner and to be allocated toward community services and facilities, local parkland acquisition and improvements, and/or public realm improvements within the vicinity of the subject property, at the discretion of the Chief Planner and Executive Director, City Planning, in consultation with the Ward Councillor;
2. The \$2,800,000.00 cash contribution is to be indexed upwardly in accordance with the Statistics Canada Non-Residential Construction Price Index for the Toronto Census Metropolitan Area, reported quarterly by Statistics Canada in Building Construction Price Indexes Publication 327-0058, or its successor, calculated from the date of the Ontario Land Tribunal decision to the date of payment; all cash contributions will be payable prior to issuance of the first above-grade building permit;
3. In the event the cash contribution referred to in paragraph 1 above has not been used for the determined purpose within three 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;
4. The Owner shall construct and maintain the development in accordance with Tier 1 performance measures of the Toronto Green Standard, as adopted by Toronto City Council at its meeting held on October 26 and 27, 2009 through the adoption of Item PG32.3 of the Planning and Growth Management Committee, as further amended by City Council from time to time;
5. Pursuant to the site plan control application process for the lands but in any event prior to final site plan approval of the proposed development, the owner shall design an at-grade privately-owned publicly accessible open space reflective of the vision for the Park Street Loop as directed by the Yonge-Eglinton Secondary Plan to be located on the lands abutting the Broadway Avenue frontage to a minimum width of 7.5 metres from the Broadway Avenue property line starting at the west property line of the subject lands and terminating at the west boundary of the on-site parkland dedication to be provided by the owner, to the satisfaction of the Chief Planner and Executive Director, City Planning;

6. Prior to the earlier of (i) registration of a condominium in respect of any part of the lands, (ii) the division of the lands by severance, and (iii) the first residential occupancy of any part of the development, the owner shall register a grant of easement to the City, for nominal consideration, along, upon, over, and above the entirety of the privately-owned publicly accessible open space referred to in paragraph 5 above, in priority, to the satisfaction of the City Solicitor;
7. Pursuant to the site plan control application process for the lands but in any event prior to final site plan approval of the proposed development, the owner shall design an at-grade walkway on the lands between the on-site parkland dedication and the east property line of the lands with a minimum width of 1.3 metres and a minimum length of 12.5 metres, to the satisfaction of the Chief Planner and Executive Director, City Planning;
8. Prior to the earlier of (i) registration of a condominium in respect of any part of the lands, (ii) the division of the lands by severance, and (iii) the first residential occupancy of any part of the development, the owner shall register a grant of surface easement to the City, for nominal consideration, along, upon, over, and above the entirety of the walkway on the lands referred to in paragraph 7 above, in priority, to the satisfaction of the City Solicitor;
9. Pursuant to the site plan control application process for the lands but in any event prior to final site plan approval of the proposed development, the owner shall provide an illumination plan for the development, to the satisfaction of the Chief Planner and Executive Director, City Planning;
10. Prior to the issuance of the first above-grade building permit for any part of the lands, the owner shall convey to the City the fee simple interest in a part of the lands with an area no less than 396 square metres for the purpose of public parkland pursuant to Section 42 of the Planning Act and in accordance with the Toronto Municipal Code Chapter 415, Article III, at no cost to the City and the said parkland dedication shall be in a location and configuration and free and clear above and below grade, of all easements, encumbrances and encroachments and in acceptable environmental condition, to the satisfaction of the General Manager, Parks, Forestry and Recreation; and
11. The Owner shall erect a sign to the Toronto District School Board's specifications and satisfaction prior to issuance of any building permit.





40 & 44 Broadway Avenue

File # 19 194902 NNY 15 0Z

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Former City of Toronto By-law 438-86
Not to Scale
07/13/2022

