

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: August 16, 2022 **CASE NO.:** OLT-22-003675
EFFECTIVE DATE: August 14, 2022 (formerly PL171162)

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 10033626 Canada Inc.
Subject: Request to amend the Official Plan - Failure of the City of Toronto to adopt the requested amendment
Existing Designation: Regeneration Areas
Proposed Designated: Site Specific (To be determined)
Purpose: To permit the development of a 38-storey residential building
Property Address/Description: 83-97 River Street and 2-4 Labatt Avenue
Municipality: City of Toronto
Approval Authority File No.: 17 162754 STE 28 OZ
OLT Case No.: OLT-22-003675
Legacy Case No.: PL171162
OLT Lead Case No.: OLT-22-003675
Legacy Lead Case No.: PL171162
OLT Case Name: 10033626 Canada Inc. v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 10033626 Canada Inc.
Subject: Application to amend Zoning By-law No. 569-2013 - Refusal or neglect of the City of Toronto to make a decision
Existing Zoning: Commercial-Residential (CR2.5 (c2.0;r1.5) SS2 (x1864))
Proposed Zoning: Site Specific (To be determined)
Purpose: To permit the development of a 38-storey residential building
Property Address/Description: 83-97 River Street and 2-4 Labatt Avenue
Municipality: City of Toronto
Municipality File No.: 17 162754 STE 28 OZ
OLT Case No.: OLT-22-003676

Legacy Case No.: PL171163
 OLT Lead Case No.: OLT-22-003675
 Legacy Lead Case No.: PL171162

BEFORE:

G.C.P. BISHOP) Sunday, the 14th
)
 ALTERNATE CHAIR) day of August, 2022

THESE MATTERS having come on for a public hearing on December 8, 2021, and the Ontario Land Tribunal (the “Tribunal”) and the Tribunal having issued a Decision and Interim Order on December 17, 2021, allowing the Applicant/Appellant’s appeals of the request to amend the City of Toronto Zoning By-law 569-2013 in principle, with the final Order withheld pending the Tribunal being advised by the City Solicitor that the conditions contained in that Order have been satisfied;

AND THE TRIBUNAL having been advised by the Parties on August 14, 2022, that the conditions have been fully satisfied or otherwise addressed to the satisfaction of the Parties, and that the City and the Applicant and Appellant are thus jointly requesting that the Tribunal proceed to issue its Final Order on that bases;

AND THE TRIBUNAL having received, considered and determined the request for the Final Order on Sunday, on the 14th day of August, 2022;

AND THE TRIBUNAL BEING SATISFIED that the prior conditions to the Final Orders previously imposed by the Tribunal, upon the consent of the parties, have been satisfied or will now be appropriately addressed and that it is accordingly appropriate that the Tribunal issue its Final Order amending the identified Zoning By-law through the revised instruments now submitted for final approval upon the joint request of the City and the Applicant and Appellant;

THE TRIBUNAL ORDERS that the Appeal is allowed, in part, and that Zoning By-law No. 569-2013 of the City of Toronto, as amended, is hereby amended in the manner set out in Attachment “1” to this Order. The Tribunal authorizes the municipal clerk to format, as may be necessary, and assign a number to this by-law for record keeping purposes.

AND THE TRIBUNAL ORDERS that pursuant to Rule 24.3 of the Tribunal’s *Rules of Practice and Procedure*, notwithstanding the eventual date of the formal issuance of this Order, it shall be, and was, effective as of Sunday, August 14, 2022, which is the date that the Tribunal received, considered and determined the request for the Final Order in this proceeding.

“Euken Lui”

EUKEN LUI
ACTING REGISTRAR

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT "1"

Authority: Ontario Land Tribunal Decision issued on December 17, 2021 and Order issued on August 16, 2022 in Tribunal File PL171162

CITY OF TORONTO**BY-LAW XXX-2022**

To amend Zoning By-law No. 569-2013 with respect to the lands municipally known in the year 2021 as 83-97 River Street and 2-4 Labatt Avenue.

Whereas the Ontario Land Tribunal Decision issued on December 17, 2021 and Order issued on August 16, 2022 in Tribunal File PL171162, following an appeal pursuant to Section 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended, determined to amend City of Toronto Zoning By-law 569-2013, as amended, with respect to the lands municipally known as 83-97 River Street and 2-4 Labatt Avenue; and

Whereas pursuant to Section 37 of the Planning Act, a by-law passed under Section 34 of the Planning Act may authorize increases in height and density of development beyond that otherwise permitted by the by-law that will be permitted in return for the provision of such facilities, services and matters as are set out in the by-law; 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 subsection 37(3) of the Planning Act provides that where an owner of lands elects to provide facilities, services and matters in return for an increase in 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 lands known at the date of the enactment of this by-law as 83-97 River Street and 2-4 Labatt Avenue (the "Lands") has elected to provide the facilities, services and matters as set out in this by-law; and

Whereas the increase in height and density of development permitted under this by-law beyond that otherwise permitted on the Lands by Zoning By-law 569-2013, as amended, is to be permitted in return for the provision of facilities, services and matters as set out in this by-law and to be secured by one or more agreements between the owner of the Lands and the City of Toronto; and

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

The Ontario Land Tribunal orders:

1. The lands subject to this By-law are outlined by heavy black lines on Diagram 1, attached to this By-law.
2. The words highlighted in bold type in this By-law have the meaning provided in Zoning By-law 569-2013, Chapter 800 Definitions except as specified by this By-law.
3. Zoning By-law 569-2013, as amended, is further amended by adding Article 900.11.10 Exception Number 520 so that it reads:

(520) Exception CR 520

The lands, or a portion thereof as noted below, are subject to the following Site-specific Provisions, Prevailing By-laws and Prevailing Sections.

Site-specific Specific Provisions:

- (A) On 83-97 River Street and 2-4 Labatt Avenue, as shown on Diagram 1 of By-law [Clerks to insert By-law ##], if the requirements of Section 5 and Schedule A of By-law [Clerks to supply by-law ##] are complied with, a **building** or **structure** may be constructed, used or enlarged in compliance with regulations (B) to (X) below;
- (B) Despite Regulation 40.10.40.40(1), the permitted maximum **gross floor area** of all **buildings** and **structures** on the **lot** is 24,000 square metres, of which:
 - (i) the required minimum **gross floor area** for non-residential uses is 250 square metres;
- (C) In addition to Regulation 40.5.40.40(3), the **gross floor area** of a **mixed use building** is also reduced by:
 - (i) areas below-ground, except for the areas of lobbies and elevator lobby vestibules;
 - (ii) areas for architectural features or frames; and
 - (iii) all indoor **amenity space**;
- (D) Despite Regulation 40.10.40.1.(1), if a **lot** in the CR zone has a **mixed use building**, all residential use portions of the **building** must be located above non-residential use portions of a **building** other than residential lobby access or a management office;
- (E) Of the total number of **dwelling units** provided:

- (i) A minimum of 40 percent must be two-bedroom **dwelling units** or larger; and
 - (ii) A minimum of 10 percent must be three-bedroom **dwelling units** or larger;
- (F) The floorplate area, as measured from the exterior **main wall** of each **storey** of the **building**, above a **height** of 17.5 metres, must not exceed 768 square metres for each **storey**;
- (i) for clarity, for the purpose of (F), the floorplate area does not include the areas of inset balconies, and architectural features or frames.
- (G) The required minimum height of the sixth **storey** is 4.6 metres.
- (H) Despite Regulation 40.10.40.50(1), **amenity space** must be provided and maintained on the **lot** in accordance with the following:
- (i) A minimum of 2.5 square metres per **dwelling unit** of indoor **amenity space**;
 - (ii) A minimum of 1.4 square metres per **dwelling unit** of outdoor **amenity space**, of which at least 40.0 square metres is in a location adjoining or directly accessible to the indoor **amenity space**;
 - (iii) No more than 25 percent of the required outdoor **amenity space** may be a **green roof**;
 - (iv) The sixth **storey** of the **building** must contain at least 350 square metres of indoor **amenity space** and 520 square metres of outdoor **amenity space**; and
 - (v) for the purposes of this exception, **amenity space** may include a maximum of 1 guest suite provided:
 - (a) the guest suite does not exceed 40 square metres; and
 - (b) the guest suite does not include food preparation facilities.
- (I) Despite Regulations 40.5.40.10(1) and (2), the **height** of a **building** or **structure** is the distance measured from the Canadian Geodetic Datum elevation of 84.19 metres to the highest point of the **building** or **structure**;
- (J) Despite Regulations 40.5.40.70(1), 40.10.40.70(2), 40.10.40.80(2), and Article 600.10.10, the required minimum **building setbacks** and minimum distance

between **main walls** for a **building** or **structure** are as shown in metres on Diagram 3 of By-law [Clerks to supply by-law ##];

- (K) Despite (K) above no portion of a **building** shall be located within “Area A” as shown on Diagram 3 of By-law [Clerks to supply by-law ##], between a height of 84.87 metres Canadian Geodetic Datum elevation, and 88.99 metres Canadian Geodetic Datum elevation;
- (L) Despite Clause 40.10.40.60, and (K) and (L) above, the following elements may encroach into the required minimum **building setbacks** and **main wall** separation distances as shown on Diagram 3 of By-law [Clerks to supply by-law ##] as follows:
- (i) window sills to a maximum of 1.0 metres;
 - (ii) cornices, light fixtures, ornamental elements (including mullion caps and projected metal panels), parapets, planters, vents, bollards, ventilation shafts to a maximum of 2.0 metres;
 - (iii) architectural features or frames, landscape features, pergolas, trellises, guardrails, balustrades, railings, stair enclosures, doors, wheelchair ramps, ladders, wind or acoustic screens, site servicing features, awnings and canopies to a maximum of 3.0 metres;
 - (iv) balconies, Juliette balconies, associated dividers and decorative elements such as metal slab covers to a maximum of 2.0 metres; and
 - (v) window washing equipment to a maximum of 3.5 metres;
- (M) Despite Regulations 40.10.40.10(2) and (7), the permitted maximum height of a **building** or **structure** is the numerical value in metres following the symbol "HT" and the permitted maximum number of **storeys** is the numerical value following the symbol "ST" as shown on Diagram 3 of By-law [Clerks to supply by-law ##];
- (N) Regulation 40.10.40.10(5), with respect to the required minimum height of the first **storey**, does not apply.
- (O) Despite Regulations 40.5.40.10(2), (4), (6), (7), and (8), and (O) above, the following elements of a **building** may project above the permitted maximum height in Diagram 3 of By-law [Clerks to supply by-law ##]:
- (i) roof drainage, thermal insulation, roof surface materials and roof ballast which may exceed the height limits to a maximum of 1.0 metres;

- (ii) parapets, planters, **green roof** elements, vents, pipes, railings, terrace or balcony guards and dividers, communication equipment and fences which may exceed the height limits to a maximum of 2.0 metres; and
 - (iii) trellises, pergolas, **landscaping** features or elements, partitions, screens, ornamental elements, architectural elements, lighting fixtures, safety or wind protection screens or elements, which may exceed the height limits to a maximum of 3.5 metres;
 - (iv) mechanical penthouse, mechanical equipment and any associated support or enclosure **structure** or elements stairs, stair enclosures, elevator overruns, elevator machine rooms to a maximum of 7.5 metres;
 - (v) flues, access roof hatch, chimneys, ladders, garbage chute projections, maintenance catwalks, window washing equipment, mechanical penthouse parapets or screens up to a maximum of 2.7 metres above the mechanical penthouse roof slab.
- (P) Regulation 40.5.40.10(5), with respect to the limits on elements for the functional operation of a **building**, does not apply;
- (Q) Despite Regulation 200.5.10.1(1) and Table 200.5.10.1, **parking spaces** must be provided and maintained in accordance with the following:
- (i) a minimum of 0.2 residential occupant **parking spaces** per **dwelling unit**;
 - (ii) a minimum of 0.05 residential visitor and non-residential **parking spaces** per **dwelling unit**, which may be provided as **public parking**, on a non-exclusive basis;
- (R) Despite Regulation 200.5.10.1(1), and (R) above, "car share parking spaces" may replace **parking spaces** otherwise required for residential occupants, subject to the following:
- (i) a reduction of four resident occupant **parking spaces** will be permitted for each "car-share parking space" provided, up to a maximum of five "car-share parking spaces", and that the maximum reduction permitted by this means be capped by application of the following formula:
 - (a) Four multiplied by (total number of **Dwelling Units** divided by 60), rounded down to the nearest whole number.
 - (ii) a minimum of two "car-share parking spaces" must be provided.

- (S) Despite Regulations 200.15.1(1) and 200.15.10(1), a minimum of 4 of the required **parking spaces** must be provided as accessible **parking spaces**, in accordance with the following:
- (i) a minimum length of 5.6 metres;
 - (ii) a minimum width of 3.4 metres;
 - (iii) a minimum vertical clearance of 2.1 metres;
 - (iv) the entire length of an accessible **parking space** must be adjacent to a 1.5 metre wide accessible barrier free aisle or path; and
 - (v) accessible **parking spaces** must be located within 30 metres of a barrier free entrance to the **building** or passenger elevator that provides access to the first **storey** of the **building**.
- (T) Despite Regulation 200.5.1.10(2)(A)(iv), a maximum of 15 percent of the total **parking spaces** may be obstructed on one or two sides in accordance with 200.5.1.10(2)(D) without a requirement to increase the minimum width by 0.3 metres;
- (U) Despite Regulation 230.5.1.10(9), "long-term" **bicycle parking spaces** and "short-term" **bicycle parking spaces** may be located below-ground and in **stacked bicycle parking spaces**;
- (V) Despite Regulation 230.5.1.10(10) a "short-term" **bicycle parking space** may also be located in a **stacked bicycle parking space**.
- (W) For the purposes of By-law [clerks to insert By-law ##], "car-share" means the practice where a number of people share the use of one or more cars that are owned by a profit or non-profit car-sharing organization and where such organization may require that use of cars to be reserved in advance, charge fees based on time and/or kilometres driven, and set membership requirements of the car-sharing organization, including the payment of a membership fee that may or may not be refundable.
- (X) For the purposes of By-law [clerks to insert By-law ##], "car-share parking space" means a **parking space** that is reserved and actively used for "car-share" purposes.

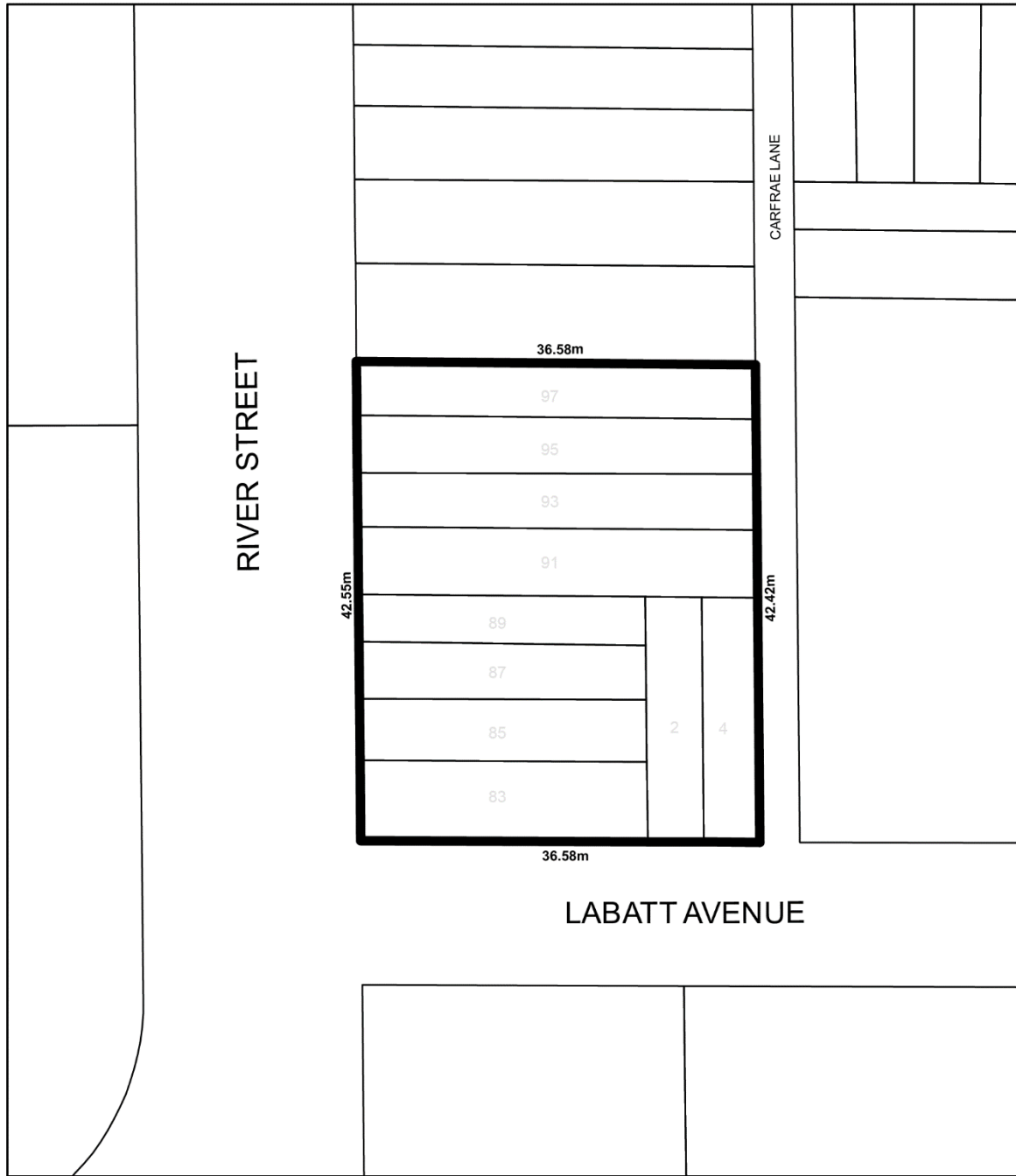
Prevailing By-laws and Prevailing Sections: (none apply)

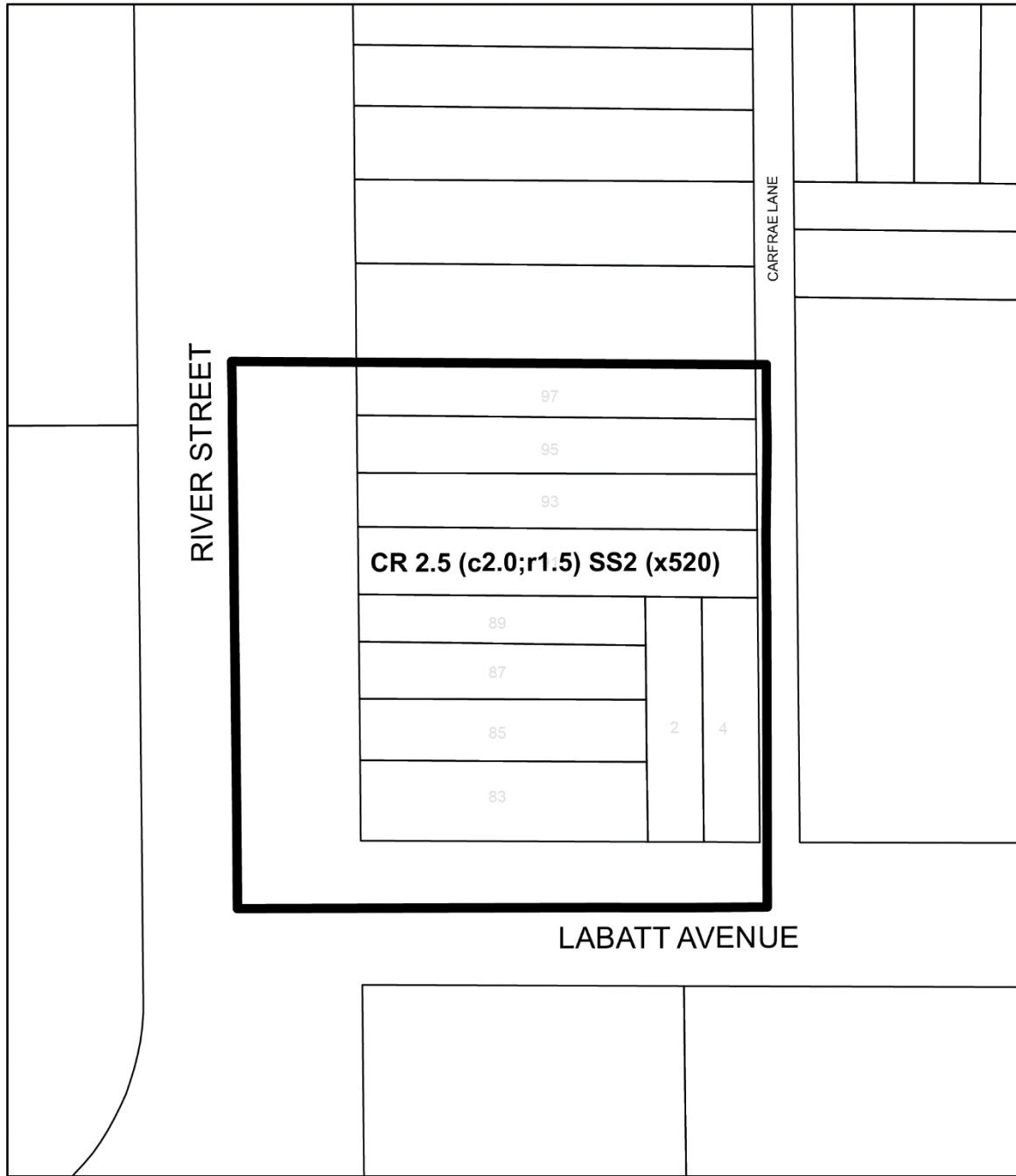
4. Despite any severance, partition or division of the lands, the provisions of this By-law shall apply as if no severance, partition or division occurred.

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 Diagram 1 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.
- (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.

Pursuant to Ontario Land Tribunal Decision/Orders issued December 17, 2021 and August 16, 2022, in Tribunal File PL171162.





SCHEDULE A

Section 37 Provisions

The facilities, services and matters set out herein are the matters required to be provided by the owner at its expense to the City in accordance with an agreement or agreements, pursuant to Section 37(3) of the Planning Act, in a form satisfactory to the City and the owner with conditions providing for indexing escalation of both the financial contributions, and letters of credit, indemnity, insurance, HST, termination and unwinding, and registration and priority of agreement:

1. The owner shall provide and maintain seven (7) replacement rental dwelling units on the lands for a period of at least 20 years beginning from the date that each replacement rental unit is first occupied. The (7) replacement rental dwelling units shall be provided to the satisfaction of the Chief Planner and Executive Director, City Planning and in accordance with the terms and conditions set out in the Section 37 Agreement;
2. The owner shall provide a tenant relocation and assistance plan and a right to return to a replacement unit to the satisfaction of the Chief Planner and Executive Director, City Planning and in accordance with the terms and conditions set out in the Section 37 Agreement;
3. The Owner shall, at its sole cost and expense, provide, construct, and thereafter repair and maintain an area of no less than one hundred and twenty five (125) square metres of privately owned, publicly-accessible space (the "POPS") on the Lands in accordance with the terms and conditions set out in the Section 37 Agreement;
4. The POPS shall be completed by the Owner and open to the public no later than six months after the first residential use or occupancy of the Lands, whichever comes first, to the satisfaction of the Chief Planner in consultations with the City Solicitor.
5. Prior to Site Plan Approval for any part or all of the Lands, the Owner shall register a grant of easement in perpetuity to the City for nominal consideration over, upon, above, and through the entirety of the POPS for the purpose of publicly accessible open space use by the general public in accordance with the terms and conditions set out in the Section 37 Agreement.
6. Prior to final Site Plan Approval, the Owner shall convey to the City, for nominal consideration, a non-exclusive surface easement in perpetuity for public pedestrian access over a 2.1 metre along River Street in accordance with the terms and conditions set out in the Section 37 Agreement.
7. Prior to final Site Plan Approval for the Development, the owner shall convey to the City the following for nominal consideration to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services:

- a. 1.17 metre wide strip of land to the full extent of the site abutting the west limit of Carfrae Lane, and
 - b. 5 metre corner rounding at the northeast corner of River Street and Labatt Avenue; and
8. Prior to final Site Plan Approval for the Development, the Owner shall submit a Construction Management Plan to the satisfaction of the Chief Planner, in consultation with the Ward Councillor.
 9. Prior to the issuance of any Building Permit, the owner shall enter into and register on title an agreement to the satisfaction of the City Solicitor pursuant to 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 to secure the community benefits above.