

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** January 04, 2017

**CASE NO(S):** PL150293

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

Applicant and Appellant:	Erskine Park Holdings Inc.
Subject:	Application to amend Zoning By-law No. 438-86 - Refusal or neglect of City of Toronto to make a decision
Existing Zoning:	MCR T3.0 C2.0 R2.5
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit the development of a 35-storey residential building
Property Address/Description:	18-30 Erskine Avenue
Municipality:	City of Toronto
Municipality File No.:	12 267217 NNY 25 OZ
OMB Case No.:	PL150293
OMB File No.:	PL150293
OMB Case Name:	Erskine Park Holdings Inc. v. Toronto (City)

**Parties**

**Counsel\*/Representative**

Erskine Park Holdings Inc.	A. Brown*
City of Toronto	S. Bradley*
17-30 Keewatin Neighbours Group	J. Fitzwilliam
Sherwood Park Residents' Association	B. Daube

**AMENDING DECISION DELIVERED BY B.W. KRUSHELNICKI AND ORDER OF THE BOARD**

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[1] In accordance with Rule 108 of the Board's *Rules of Practice and Procedure*

("Rules"), the Board may at any time and without prior notice to the parties correct a technical or typographical error made in a decision or order.

[2] And, in accordance with Rule 119 of the Board's Rules, the Chair may initiate a Request for Review and exercise his/her discretion under Rule 115.01 upon notice with reasons to all parties to a proceeding and within a reasonable time after the Board decision, approval or order is made.

[3] The Board's Decision and Order issued on January 12, 2016 (the "Decision"), states in paragraphs [7] and [8] that:

[7] The Board afforded additional time to the parties to finalize the ZBA document and to submit the signed and executed s. 37 Agreement. As the parties have done so, the Board now makes the following Order:

**ORDER**

[8] The appeal is allowed in part and the ZBA (Attachment 1 to this Order) is approved.

[4] Subsequent to the issuance of the Decision, the Board was made aware by Counsel for the City of Toronto that the ZBA (Zoning By-law Amendment to By-law No. 438-86) and the s. 37 Agreement appended to the Decision as Attachment 1 were not final. Counsel has since supplied the final ZBA and confirms that the s. 37 Agreement has been finalized and executed.

[5] The Decision and Order issued on January 12, 2016, is hereby amended by replacing Attachment 1 to that decision with Attachment 1 to this decision.

[6] In all other respects the Board's Decision and Order remains the same.

*"B.W. Krushelnicki"*

B.W. KRUSHELNICKI  
EXECUTIVE CHAIR

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Ontario Municipal Board**

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# ATTACHMENT 1

## ZONING BY-LAW AMENDMENT TO BY-LAW NO. 438-86

Authority: Authority: Ontario Municipal Board Order issued on \_\_\_\_\_, in Board File No. PL150293

### CITY OF TORONTO

#### BY-LAW No. -2016 (OMB)

**To amend General Zoning By-law No. 438-86 of the former City of Toronto with respect to lands known municipally as 18, 20, 22, 24, 26 and 30 Erskine Avenue.**

Whereas the *owner* of the lands known municipally in the year 2015 as 18, 20, 22, 24, 26 and 30 Erskine Avenue appealed a proposed zoning by-law amendment to the Ontario Municipal Board;

Whereas the Ontario Municipal Board, by its decision issued on January 6, 2016 and Order issued on \_\_\_\_\_, in Board File No. PL150293 approved amendments to the former City of Toronto Zoning By-law No. 438-86, as amended, with respect to the lands;

Now therefore pursuant to the Order of the Ontario Municipal Board, By-law No. 438-86, the General 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 within the *site* 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 the said requirements.

3. Wherever in this By-law a provision is stated to be conditional upon the execution and registration of an agreement entered into with the City pursuant to Section 37 of the *Planning Act*, then once such agreement has been executed and registered, such conditional provisions shall continue to be effective notwithstanding any subsequent release or discharge of all or any part of such agreement.
4. Except as otherwise provided herein, the provisions of *By-law No. 438-86* shall continue to apply to the *site*.
5. None of the provisions of Section 2 with respect to "*bicycle parking space – occupant*", "*bicycle parking space – visitor*", "*grade*", "*height*", "*residential amenity space*", "*residential gross floor area*" and Section 4(2)(a), 4(3)(a), 4(3)(b), 4(4)(b), 4(12), 4(13)(c), 4(16), 8(3) Part I, 8(3) Part II 1, 8(3) Part II 4, 8(3) Part IV 1, 12(2) 119(ii) and (iv) of *By-law No. 438-86*, shall apply to prevent the erection and use of a *residential building* containing *dwelling units*, and uses *accessory* thereto on the *site* provided that all of the provisions of this by-law are complied with.
6. The *lot* on which the building is located comprises at least the *site*.
7. The total combined *residential gross floor area* on the *site*, shall not exceed 21,000 square metres and there shall be no *non-residential uses* or *non-residential gross floor area* within the *site*.
8. A minimum of 630 square metres of indoor *residential amenity space* shall be provided and maintained on the *site*.
9. A minimum of 405 square metres of outdoor *residential amenity space* shall be provided and maintained on the *site*, including 140 square metres of breezeway space at *grade*.
10. The maximum number of *dwelling units* shall be 315.

11. A total of 315 new rental dwelling units, including 6 two-bedroom *rental replacement units*, shall be provided on the *site* pursuant to the conditions outlined in Appendix 1.
  
12. A total of 6 two-bedroom *rental replacement units* shall be provided on the *site* pursuant to the conditions outlined in Appendix 1.
  
13. No part of any building or structure erected within the *site* shall be located above *grade* otherwise than wholly within the *building envelopes* as shown on Map 2, except for the type of structures listed in the column entitled "Elements and Structures" in the following chart, provided that the restrictions set out *opposite* the structure in the columns entitled "Limitations" are complied with:

Elements and Structures	Limitation
Awnings, architectural elements, balustrades, canopies, cornices, eaves, fences, fixtures, guardrails, lighting, landscape planters and seating areas, ornamental elements, ramps to an underground garage, retaining walls, elevator overrun, skylights, stairways and railings, underground garage stair enclosures, wheelchair ramps, window washing equipment, vents, pipes, access roof hatch, lightning rods and exhaust flues	Permitted to extend outside a <i>building envelope</i> subject to a maximum horizontal projection of 2.0 metres beyond outside the <i>building envelope</i> .
Balconies	Along Erskine Avenue, at a height greater than 15.0 metres, balconies are permitted to project up to 1.0 metres outside a <i>building envelope</i> , but not within 3.0 metres of the corners of the building. At all other locations, balconies are permitted to project up to 2.0 metres outside a <i>building envelope</i> .
Bay Windows	Along Erskine Avenue, bay windows are permitted to project outside a <i>building envelope</i> up to 0.6 metres for a maximum width of 9.0 metres across the front of the building. In all other locations, bay windows are permitted to project up to

	2.0 metres outside a <i>building envelope</i> .
Parapets, including roof drainage, railings, thermal insulation and roof ballast, terrace guards and dividers, partitions dividing outdoor recreation areas and trellises, landscape elements and seating, planters, railings, stair enclosures, elevator shafts, elevator shaft enclosures, trellises	Permitted to extend outside a <i>building envelope</i> subject to a maximum vertical projection of 6.2 metres above the height limits shown on Map 2 so long as there is no additional shadow on the sidewalk on the north side of Keewatin Avenue in the area designated as Neighbourhoods in the Official Plan.

14. The *height* of each portion of a building or structure erected above *grade* within the *site*, shall in respect of each *building envelope* area, have a maximum *height* in metres and in *storeys* as shown following the symbol H on the attached Map 2 for the corresponding *building envelope* area, provided that mezzanines located between the ground floor and second storey of the building and used for the purpose of bicycle storage and/or mechanical space shall not be counted as a separate *storey*.
15. *Parking spaces* shall be provided and maintained on the *site* in accordance with the following minimum requirements:
- (a) a minimum of 0.3 *parking spaces* per *dwelling unit* for the use of the residents of the building;
  - (b) a minimum of 0.05 *parking spaces* per *dwelling unit* for visitors; and
  - (c) 10 *car-share parking spaces*;
16. Notwithstanding the previous Section, the required *parking spaces* for residents shall be reduced at a rate of four *parking spaces* for each required *car-share parking space* on the *site*.
17. Notwithstanding Section 4(17)(a) of *By-law No. 438-86*, a maximum of 15 *parking spaces* on the *site* may have a minimum width of 2.5 metres and a maximum of 4 *parking spaces* on the *site* may have a minimum width of 3.9m and a minimum length of 5.63m.
18. A minimum of 1.0 *bicycle parking spaces* per *dwelling unit* shall be provided and maintained on the *site* in accordance with the following:

(a) for residents not less than 0.9 *bicycle parking spaces – occupant per dwelling unit* shall be provided, and

(b) for visitors, not less than 0.1 *bicycle parking spaces – visitor per dwelling unit* shall be provided.

19. Within the *site*, no person shall use any land or erect or use any building or structure unless the following municipal services are provided to the lot line and the following provisions are complied with:

(a) all new public roads have been constructed to a minimum of base curb and base asphalt and are connected to an existing public highway; and

(b) all water mains and sanitary sewers, and appropriate appurtenances, have been installed and are operational.

20. Despite any existing or future severance, partition or division of the *site*, the provisions of this By-law shall apply to the whole of the *site* as if no severance, partition or division occurred.

21. None of the provisions of this By-law shall apply to prevent a *temporary rental office* on the *site*.

22. For the purposes of the By-law, the following expressions shall have the following meaning:

(a) "*bicycle parking space – occupant*" means an area that is equipped with a bicycle rack or locker for the purpose of parking and securing bicycles, and:

(i) where the bicycles are to be parked on a horizontal surface, has horizontal dimensions of at least 0.5 metres by 1.8 metres and a vertical dimension of at least 1.9 metres;

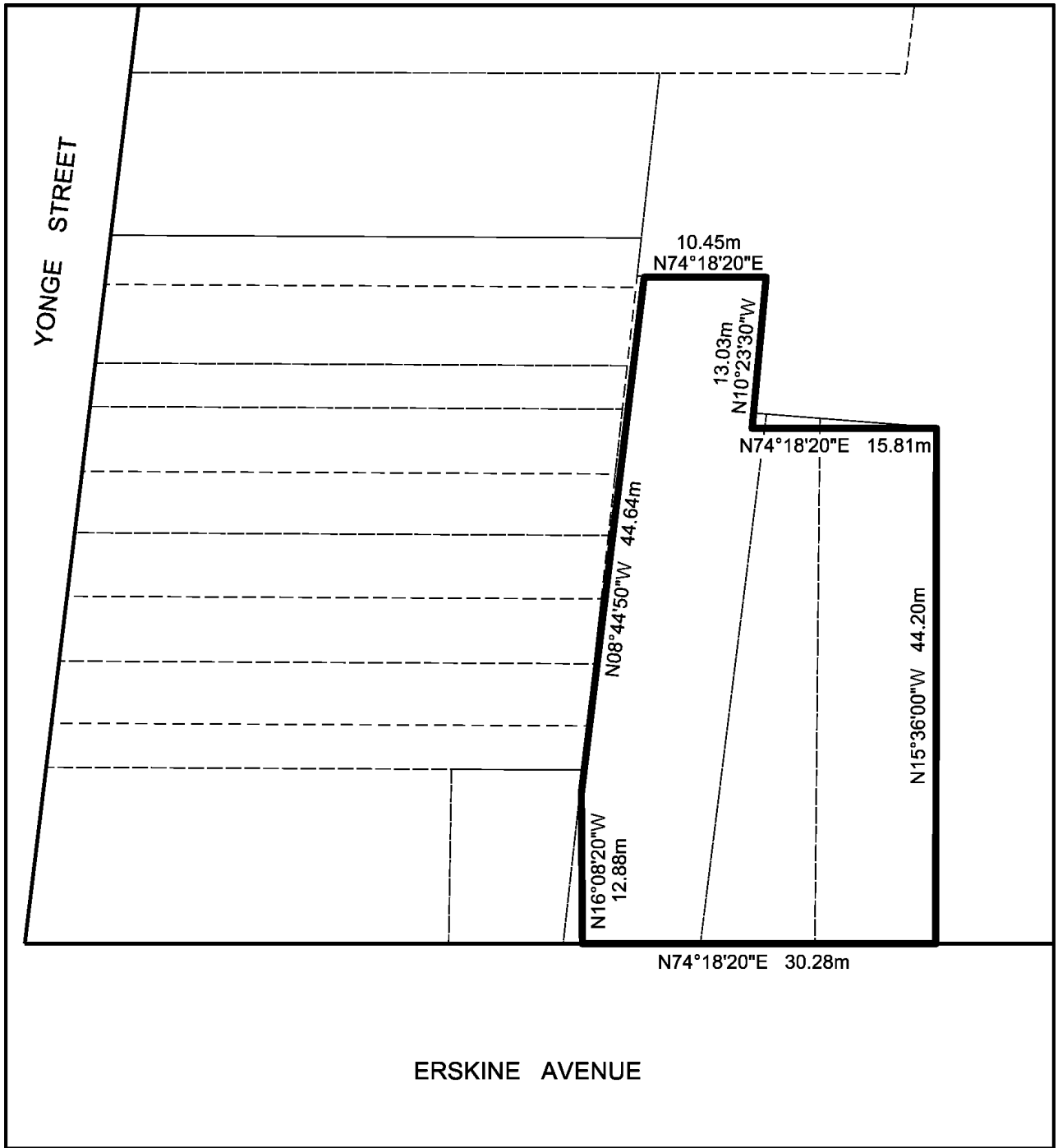
(ii) where the bicycles are to be parked in a vertical position, has horizontal dimensions of at least 0.5 metres by 1.2 metres and a vertical dimension of at least 1.9 metres;

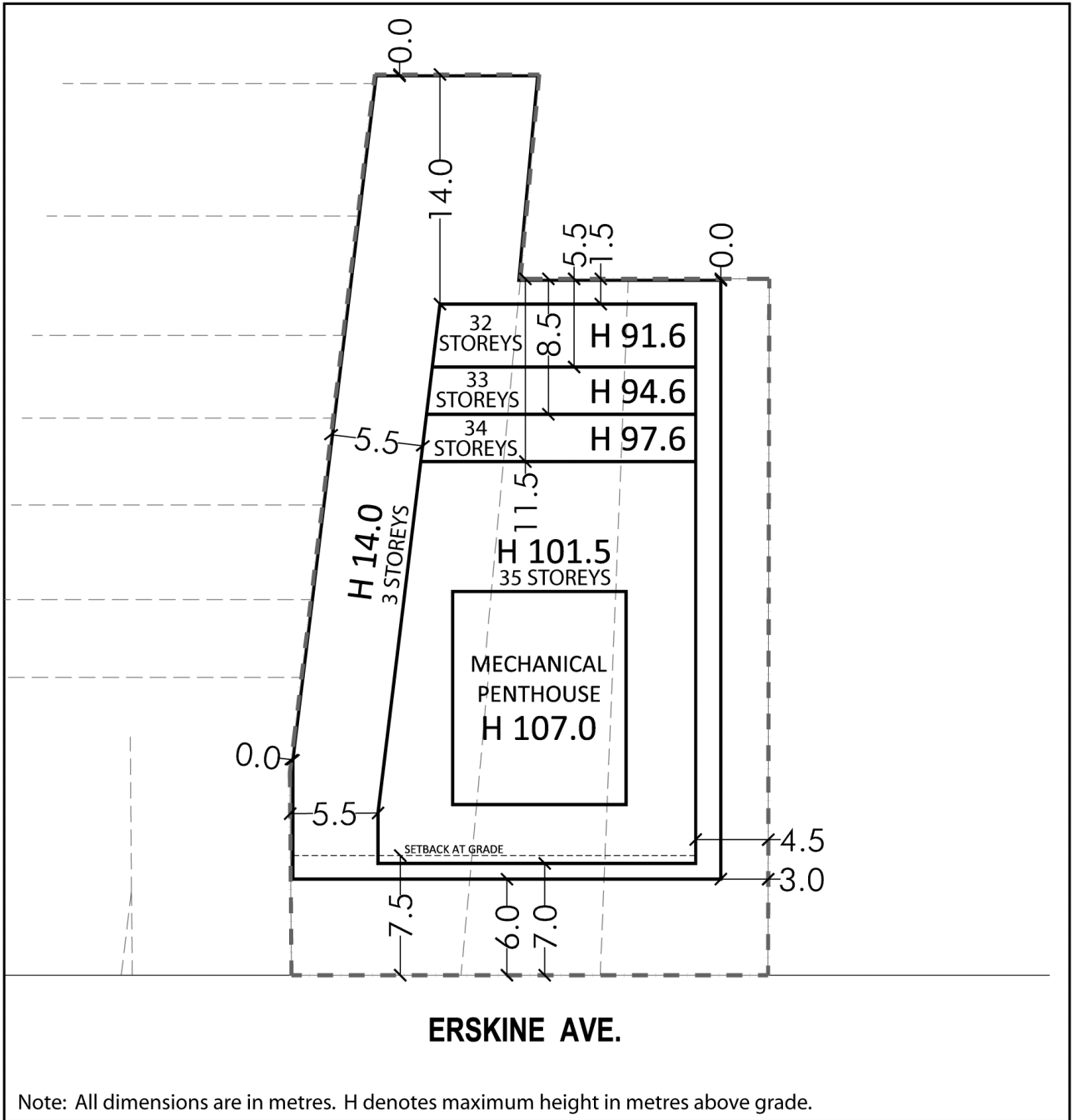


- (iii) in the case of a bicycle rack, is located in a secured room or area; and
  - (iv) in the case of a bicycle locker, may contain ancillary storage.
- (b) "*bicycle parking space – visitor*" means an area that is equipped with a bicycle rack for the purpose of parking and securing bicycles, and:
  - (i) where the bicycles are to be parked on a horizontal surface, has horizontal dimensions of at least 0.5 metres by 1.8 metres and a vertical dimension of at least 1.9 metres;
  - (ii) where the bicycles are to be parked in a vertical position, has horizontal dimensions of at least 0.5 metres by 1.2 metres and a vertical dimension of at least 1.9 metres; and
  - (iii) may be located indoors or outdoors including within a secured room or enclosure;
- (c) "*building envelope*" means a building envelope as delineated by heavy lines on Map 2 attached to this By-law;
- (d) "*By-law No. 438-86*" means By-law No. 438-86, as amended, of the former City of Toronto;
- (e) "*car-share parking space*" means a *parking space* used exclusively for the parking of a *car-share motor vehicle*;
- (f) "*car-share motor vehicle*" means a motor vehicle available for short term rental, including an option for hourly rental, for the use of at least the occupants of a building erected on the *site*;
- (g) "*Chief Planner*" means the City of Toronto Chief Planner and Executive Director;
- (h) "*City*" means the City of Toronto;
- (i) "*dwelling unit*" means living accommodation comprising a single housekeeping unit, designed or intended for use by one person or by persons living together as a family, and consisting of a room or suite of two or more rooms in which both culinary and sanitary facilities are provided for the exclusive uses of such person or persons;

- (ji) “*grade*” shall mean, 163.86 metres above sea level based on Geodetic Survey of Canada 1929 mean sea level vertical datum (1978 Southern Ontario Adjustment);
- (k) “*height*” shall mean the vertical distance between *grade* and the highest point of a building or structure;
- (l) “*owner*” means the owner of the fee simple of the *site* or any part thereof;
- (m) “*residential building*” means a building containing only residential uses, including any *accessory* uses thereto, and for the purposes of section 4(11), includes the residential portion of a *mixed-use* building;
- (n) “*rental replacement dwelling unit*” means a *dwelling unit* which replaces one of the rental units existing on the *site* at the time of enactment of this by-law, as required pursuant to section 111 of the City of Toronto Act, 2006, S.O. 2006, c.11;
- (o) “*residential gross floor area*” shall have the same meaning as in By-law 438-86, as amended, but shall also exclude all *residential amenity space* provided on the *site*, storage areas located above *grade*, elevator, garbage shafts, garbage rooms, and exit stairs;
- (p) “*site*” means the lands delineated by heavy lines on Map 1 attached to this By-law;
- (q) “*temporary rental office*” means a building, structure, facility or trailer on the *site* used for the purpose of the rental of *dwelling units* to be erected on the *site*; and
- (r) each other word or expression, which is italicized in this by-law, shall have the same meaning as each such word or expression as defined in *By-law No. 438-86*.

PURSUANT TO THE ORDERS OF THE ONTARIO MUNICIPAL BOARD ISSUED ON \_\_\_\_\_ IN  
BOARD FILE NO. PL150293.





## Appendix 1

### Section 37 Provisions

The facilities, services and matters set out herein are the matters required to be provided by the *owner* of the *site* 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 the financial contributions, and letters of credit, indemnity, insurance, HST, termination and unwinding, and registration and priority of agreement:

1. Prior to the issuance of the first above grade building permit the *owner* shall make the following payments to the *City*:
  - a. The *owner* agrees to pay the sum of One Million, One hundred thousand (\$1,100,000.00) to the *City* (together with any increases to reflect increases in the Construction Price Statistics between the date of this Agreement and the delivery of such payment), prior to the issuance of the first Above-Grade Building Permit for the Development, to be used towards the design and implementation of off-site streetscape, street tree improvements and/or public realm improvements on Keewatin Avenue and the Yonge Eglinton Apartment Neighbourhood in consultation with the Ward Councillor and *Chief Planner*.
  - b. In the event the payment referred to above has not been used for the intended purposes within three (3) years of the Final Confirmation Date the payment or that portion may be used for such other purpose as the Chief Planner, in consultation with the Ward Councillor, may direct provided it is identified in the *City's* Official Plan and will benefit the community in the vicinity of the *site*.
2. The *owner* agrees that all of the *dwelling units* to be provided within the *site* shall be rental *dwelling units* and to that end the *owner* agrees to construct, provide and maintain at least three hundred and nine (309) rental *dwelling units* as secured market rental units and at least six (6) rental *dwelling units* as the new mid-range rental replacement units, located on the 5<sup>th</sup> 6<sup>th</sup> and 34<sup>th</sup> floors of the Building comprising the unit mix as set out in Table 2, below, to the satisfaction of the *Chief Planner*, subject to the following:
  - a. The rental replacement *dwelling units* will be as follows:

#### **Table 2: Proposed Replacement Rental Dwelling Unit Floor Area**

Based on Floor Plans dated August 25, 2016

Unit Number	Unit Type	Floor	Proposed Floor Area	
			Sq. Ft.	Sq. M.
508	2-bedroom	5	846	78.6
509	2-bedroom	5	795	73.8
510	2-bedroom	5	804	74.7
608	2-bedroom	6	846	78.6
610	2-bedroom	6	804	74.7
3406	2-bedroom	34	983	91.3
<b>Total</b>			<b>5,075</b>	<b>471.6</b>

The minimum gross floor area contained in this section may vary by a maximum of 3% but only as a result of reasonable adjustments that may need to be made for the purposes of accommodating required final structural or mechanical design, to the satisfaction of the *Chief Planner*.

- b. Tenants occupying one of the Replacement Rental Units at 18-30 Erskine Avenue will have made available to them, or have access to, all of the following:
  - i. Bicycle parking spaces shall be provided to the tenants of the rental replacement *dwelling units* on the same basis as residents of the remainder of the building;
  - ii. At least 1 vehicle parking spaces shall be made available to tenants of the rental replacement *dwelling units*. If such parking space is not rented by the tenants of the 6 replacement rental *dwelling units* may be leased by the *owner* on a short term basis to an interested party with the understanding that such a lease may be terminated on 30 days' notice to accommodate a request for a vehicle parking space made by a tenant of a replacement rental dwelling unit;
  - iii. Ensuite washer and dryer shall be provided in each of the replacement rental *dwelling units*;

- iv. Central air conditioning shall be provided in each of the replacement rental *dwelling units*;
  - v. Tenants shall have access to all the same indoor and outdoor amenity spaces and on the same terms and conditions as the other residents without the need to pre-book or pay a fee, unless specifically required.
- c. The 6 replacement rental *dwelling units* at 18-30 Erskine Avenue shall be provided and maintained as rental *dwelling units* for at least 20 years, beginning from the date that each rental replacement unit is first occupied and until the *owner* obtains approvals for a zoning by-law amendment removing the requirement for the rental replacement units to be maintained as rental units;
- d. No application may be submitted for condominium or for any conversion to non-rental housing purposes or for demolition without providing for replacement during the 20 year period; and
- e. At such time as the 20 year Replacement Rental Period has expired, the *owner* shall continue to provide and maintain the Replacement Rental Units as Rental *Dwelling units* unless and until such time as the *Owner* has applied for and obtained the necessary approvals.
- f. The Parties acknowledge and agree that the basis for establishing the maximum rents for the replacement mid-range *dwelling units* is 1.5 times the average CMHC rent by unit type, inclusive of all utility costs for heat, power, water and gas (but not TV service, phone, internet, parking);
- g. All 6 of the existing rental *dwelling units* at 30 Erskine Avenue to be replaced in the proposed building are deemed to have been mid-range rental *dwelling units* when last occupied;
- h. If tenants of a rental replacement unit under the agreement will be paying for any of the utilities whose cost is otherwise included in the average market rent, the maximum affordable rent shall be adjusted downward based on objective cost data provided by the *owner* and subject to the approval of the Chief Planner;
- i. The maximum Initial Rent for a Returning Tenant shall not exceed the sum which equals the last legal rent paid by such tenant excluding any amounts paid to the *owner* or landlord for separate charges, increased by:
- i. a one-time 'new building allowance' of 4%; and

- ii. annual increases permitted by the Guideline beginning on the month that is twelve months after the last increase that occurred for each Eligible Tenant and ending with the last twelve month anniversary date before the date of first occupancy of the Replacement Rental Unit;
  
- j. The *owner* shall provide and maintain mid-range rents charged to the tenants who rent each of the 6 two-bedroom Mid-range Rental Replacement Units during the first 10 years of its occupancy, such that:
  - i. The initial rent shall not exceed an amount based on the most recent Fall Update Canada Mortgage and Housing Corporation Rental Market Report average rent for the City of Toronto by unit type less any adjustments if tenants are directly paying for any of the basic utility costs;
  
  - ii. Over the course of the 10 year period, annual rent increases shall not exceed the Provincial Annual Rent Guidelines and, if applicable, permitted above-Guideline increases; and
  
  - iii. Upon turn-over during the 10 year period, the rent charged to any new tenant shall not exceed an amount based on the initial rent, increased annually by the Provincial Annual Rent Guidelines, and any above-Guideline increase, if applicable;
  
- k. Rents charged to tenants occupying 1 of the 6 replacement rental *dwelling units* at the end of the 10-year period shall be subject only to annual increases which do not exceed the Provincial Annual Rent Guidelines and, if applicable, permitted above guideline increases, so long as they continue to occupy their dwelling unit and until the expiry of the 20-year rental tenure period;
  
- l. Rents charged to tenants newly occupying a replacement rental dwelling unit after the completion of the 10-year period will not be subject to restrictions by the City of Toronto under the terms of the Section 37 Agreement; and
  
- m. After the twenty year Replacement Rental Period has expired, the Rent for each tenant who leased one of the Replacement Rental Units during the Ten Year Period may be increased over a period of three (3) years to unrestricted market rent.
  
- n. The maximum monthly charge for a vehicle parking shall not exceed \$100;



- o. There shall be no other mandatory charges additional to the rent payment except as provided for in the Agreement;
- p. Charges for any other service or provision of equipment, facility shall only be for those items that a tenant may voluntarily choose to accept or decline. Examples include car parking, TV services or optional air conditioning in a unit. If the provision of an item is mandatory, such as central or built-in air conditioning, en-suite laundry equipment etc, there may be no extra charges; and
- q. There will be no additional charge for bicycle parking.
- r. Under provincial legislation, all tenants who receive notice to terminate their tenancies for the purpose of demolition are eligible for financial compensation or an acceptable alternative rental unit and a minimum notice period before they are required to vacate their unit
- s. In addition, the City approves a Tenant Relocation and Assistance Plan with provisions that extend beyond those provided under the provincial *Residential Tenancies Act*.
- t. The *Chief Planner* may, at her sole discretion, deem a tenant who moves out of the building prior to the issuance of the notice of termination for demolition to be eligible for tenant relocation assistance if it is concluded that the tenant's move was premature or not voluntary, but caused by any actions or inactions of the *owner*, especially in respect to the conditions of the building.
- u. Eligible tenants have the right to return to one of the 6 new replacement two-bedroom rental *dwelling units* at 18-30 Erskine Avenue, with rent protected for up to 20 years;
- v. Eligible tenants shall receive compensation equal to 3 month's rent, pursuant to the *Residential Tenancies Act*;
- w. Eligible tenants shall receive additional financial assistance, based on their length of tenure, as follows:

Length of Tenure	Compensation
Less than 5 years	+ 1 month rent compensation
5 to 10 years	+ 2 month rent compensation
10-15 years	+ 3 month rent compensation
15-20 years	+ 4 month rent compensation
Greater than 20 years	+ 5 month rent compensation

- x. Eligible Tenants will receive a move-out allowance of \$1,500 and a move-back allowance of \$1,500;
- y. Special needs tenants, as determined by the Chief Planner, will receive additional financial assistance equal to 2 month's rent; and
- z. The *owner*, at their sole discretion, may offer an extra payment to any tenant who waives their right to return to a replacement rental dwelling unit provided that such payments are offered on an equitable basis to all tenants, and that the amount offered has been agreed to by the City and is provided for in the Section 37 and Section 111 Agreements.
- aa. At the time the Notice to Vacate is issued, the current tenants will receive an initial payment equal to the payment owed to them under the *Rental Tenancies Act* (3 months' rent) to assist them with costs to secure other accommodation. The balance of the assistance, including any special needs amounts, (other than the move-back allowance), will be paid when vacant possession is provided;
- bb. The move-back allowance of \$1,500 will be paid on the date that returning tenants sign a lease for the replacement rental unit at 18-30 Erskine Avenue;
- cc. The optional payment for waiving the right to return on the Tenant Option Form, if offered by the *owner*, will also to be paid at the time of vacant possession; and
- dd. If any special needs tenants are determined, the timing of their payments may be varied to facilitate their relocation.
- ee. Financial assistance is not to be provided as free rent, but as a cash payment;
- ff. Special needs tenants will be provided with additional moving and relocation assistance at the time of move-out and move-back to the satisfaction of the *Chief Planner*. These services will be arranged and paid for by the applicant at their own expense;
- gg. Moving allowance is a cash payment, and no receipts are required; and
- hh. Fixed amounts shall be subject to indexing, as appropriate, and provided for in the agreements;