

1 Clarendon Avenue – Condominium Application - Final Report

Date:	April 19, 2013
To:	Toronto and East York Community Council
From:	Director, Community Planning, Toronto and East York District
Wards:	Ward 22 – St. Paul's
Reference Number:	06 143056 STE 22 CD

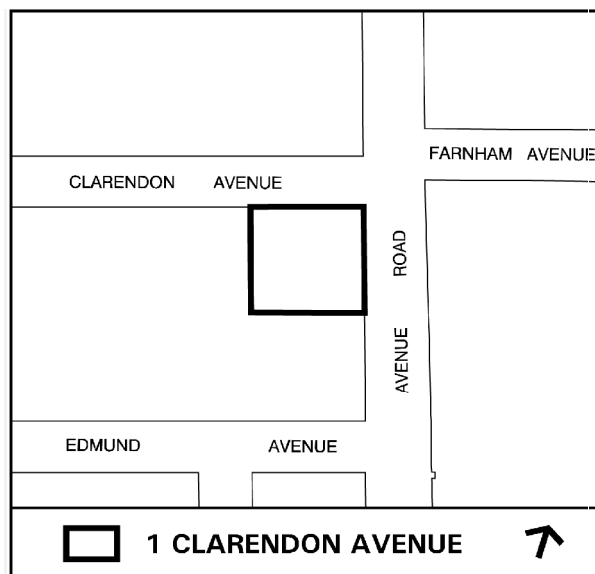
SUMMARY

This application involves the conversion of a 39 unit residential rental apartment building at 1 Clarendon Avenue. The draft plan of condominium application was first approved by City Council in November 2007, subject to certain conditions being satisfied. Although the vast majority of these units were high-end of market rentals, an Official Plan Amendment was required as not all of the rents were considered high-end. The initial three year time limit to register the condominium has lapsed, and a further three year period was granted to allow additional time for the conditions of approval to be satisfied. The applicants have expressed some concern about their ability to complete the outstanding work prior to the new expiry date of December 2013. It is recommended that the draft condominium approval be re-issued and extended to allow a further three years in order to satisfy the conditions of Draft Plan approval and registration of the condominium.

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council re-issue the Draft Plan of Condominium approval for 1 Clarendon Avenue with the conditions that were approved at the City Council meeting on November



20, 2007, and further extended by City Council on December 16, 2010, with the following change to condition 1 and the addition of a new condition 15, as set out in Attachment 1 to the report (April 19, 2013) from the Director, Community Planning, Toronto and East York District:

- "1. The plan of condominium (declaration and description) shall be registered on or before November 20, 2016, otherwise the approval shall lapse and be of no further force and effect.

15. The owner of the Site shall enter into a Condominium Agreement satisfactory to, and at the discretion of, the City Solicitor whereby the owner agrees to ensure that all tenants of the building residing in units on or before the date of registration of the condominium, are notified of, and entitled to the right of security of tenure and the right of first refusal as referred to in section 51 of the *Residential Tenancies Act*, 2006, and that such rights will continue to be offered by the current owner and subsequent purchasers despite any changes to such Act. "

Financial Impact

The recommendations in this report have no financial impact.

ISSUE BACKGROUND

An application was submitted in June 2006, to convert an existing 39-unit rental residential building at 1 Clarendon Avenue to condominium ownership. Due to the number of rental units, City Council approval was required for the Draft Plan of Condominium Approval and Official Plan Amendment. At its meeting of November 20, 2007, City Council adopted the report from the Director of Community Planning, Toronto and East York District recommending draft plan approval. On December 16, 2010, City Council approved a three year extension of the Draft Plan approval.

COMMENTS

Registration of this condominium has not yet occurred, and the applicant is requesting additional time to satisfy the remaining conditions of approval respecting the historically important building.

The Claridge Apartments, designed by Balwin & Greene and built in 1929, is a rare example of mid-rise residential construction in Toronto of the period in a Romanesque Revival Style. City Council included the Claridge Apartments on the City of Toronto Inventory of Heritage Properties in September 1976. The lobby contains a mural designed by J.E.H. Macdonald, a member of the Group of Seven. The property is designated under Part IV of the Ontario Heritage Act.

A Comprehensive Reserve Fund Study has not been completed as required. While many repairs and renovations have been completed, the applicant has not been able to complete all the work necessary to satisfy the conditions due to the scope and magnitude of the work. These outstanding items include major exterior renovations such as the restoration

of all the steel windows and the painting of the garages, and major interior improvements such as changing the building heating system from steam to hot water heating, restoring the hallways and converting all the electric stoves to gas. Accordingly, it is recommended that Draft Plan approval be re-issued and a revised time limit be established which will require that the Draft Plan conditions be met by November 20, 2016.

Section 51 of the *Residential Tenancies Act* provides certain rights to tenants residing in buildings being converted to condominium. These include: the right of security of tenure by ensuring that tenants cannot be evicted for the owner or owner's family's personal use or for use by prospective purchasers or their families; and the right of first refusal to allow tenants the first opportunity to purchase their units should the units be sold. Given the additional time sought to satisfy the conditions and the possibility of the *Residential Tenancies Act* being amended in the future, an additional condition has been added to ensure that these rights will continue to be offered to tenants of this building.

Should Council approve the request for additional time, a total of 9 years will have been provided to satisfy the conditions of approval. Staff suggests that this would allow for more than ample time to undertake the necessary repairs, and strongly urges that all remaining work be completed and the condominium registered well in advance of the new deadline, if granted.

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SIGNATURE

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ATTACHMENTS

Attachment 1: Revised Conditions of Draft Plan of Condominium Approval

**Attachment 1:
Revised Conditions of Draft Plan of Condominium Approval**

CONDITIONS

1. The plan of condominium (declaration and description) shall be registered on or before November 20, 2016, otherwise the approval shall lapse and be of no further force and effect.
2. The owner shall, prior to the registration of the plan of condominium (declaration and description), at its own expense not to be passed on to the tenants of the building, carry out and complete a comprehensive reserve fund study, as defined in s. 27 of O. Reg 48/01 made under the *Condominium Act, 1998* as a “comprehensive study”, including the matters required in condition 4 below, to the satisfaction of the Chief Planner and Executive Director.
3. The persons conducting the physical analysis of the comprehensive study described in conditions 2 and 4, shall include both an architect registered as such and holding a certificate of practice within the meaning of the *Architects Act* and a professional engineer registered as such and holding a certificate of authorization within the meaning of the *Professional Engineers Act*.
4. In addition to the requirements under the regulations made under the *Condominium Act, 1998*:
 - (a) the financial analysis component of the comprehensive study shall include a simple, easily read table setting out, by unit type, the recommended dollar amount of contributions to the reserve fund that will be required to be paid annually by each individual unit owner for each year covered by the study (not less than 30 years) based on the reserve fund required to be established by the owner in accordance with condition 4 below.
 - (b) the physical analysis component of the comprehensive study shall include in addition to the component inventory and assessment of each item within the component inventory, a detailed list of:
 - (i) the repairs and components to be replaced as a result of outstanding work orders issued by the City of Toronto;
 - (ii) the repairs and components to be replaced in order to bring the building into compliance with c. 629, Property Standards, of the City of Toronto Municipal Code, and
 - (iii) any other repairs and components to be replaced which in the opinion of the consultant(s) carrying out such study should be

completed by the owner prior to registration of the plan of condominium (declaration and description) against the lands; and

- (c) in addition to their signatures, the persons conducting the comprehensive study in respect of the property shall include the following statement in the study:

“Notwithstanding that our fee for this study will be paid by the Owner (or Condominium Corporation as the case may be) and that we have prepared this study for the Owner (or Condominium Corporation as the case may be), we acknowledge that the Condominium Corporation which will be created upon registration of the plan of condominium and the purchasers and prospective purchasers of units within the building are relying upon this study and the opinions and findings expressed herein, and consent and agree to such reliance.”

5. The owner shall, prior to registration of the plan of condominium (declaration and description), at its own expense, complete each of the repairs and replace each of the components set out on the lists compiled pursuant to conditions 4(b) (i), (ii) and (iii) above as detailed in the comprehensive study, and provide to the Chief Planner and Executive Director a certificate from the persons carrying out the study confirming all of the said repairs and replacements have been satisfactorily completed.
6. Prior to the registration of the plan of condominium (Declaration and Description), the owner shall provide to the satisfaction of the Chief Planner and Executive Director a letter from its solicitor confirming that the amount required to be contributed to the reserve fund is being held in trust, and that the solicitor has received instructions to contribute such funds to the reserve fund once it has been established.

The owner shall contribute to the reserve fund, once established, for the benefit of the condominium corporation to be created, an amount not less than the greater of:

- (a) the amount recommended in the comprehensive study required in conditions 2 and 4 above, and
- (b) the amount required pursuant to the *Condominium Act, 1998*.
7. In the event the Owner of the Site has entered into one or more agreements to convey any of the proposed units, the owner shall, prior to the registration of the plan of condominium (declaration and description) provide its solicitors confirmation that the disclosure statement required to be delivered to every person who purchases a unit or a proposed unit pursuant to Section 72 of the *Condominium Act, 1998*, did in addition to the matters specified in such Act,

(a) include a copy of the table required to be prepared in condition 4(a) above as updated and signed by the person who carried out the financial analysis component of the comprehensive study required in condition 2 to reflect the amount to be contributed to the reserve fund and being held in trust pursuant to condition 6 above; and

(b) that such updated table include the statement required in condition 4(c) above, or

alternatively, if the Owner has not entered into any agreement to convey one or more units, the owner shall provide its solicitors confirmation such is the case.

8. The Declaration and Description shall contain wording satisfactory to the City Solicitor to ensure the following conditions:

(a) The condominium corporation shall, at its expense update the table required pursuant to conditions 4(a) above on an annual basis commencing with the first reserve fund study conducted by the condominium corporation after the registration of the condominium, so as to reflect the actual reserve fund maintained by the corporation, and shall send a copy of each updated table to each unit owner and to the corporation's auditor as part of the notice required pursuant to Section 94(9) of the *Condominium Act, 1998* as well as retaining a copy for its records.

Nothing herein shall be interpreted as requiring the original author of the table to author the subsequent tables required by this condition but the table shall be prepared by a person authorized by the regulations under the *Condominium Act, 1998* to carry out the financial analysis component of a reserve fund study and each updated table shall include the statement required in condition 4(a) above;

(b) Prior to entering into an agreement of purchase and sale respecting the sale of a unit, the unit owner shall provide a copy of the most recent table delivered to them pursuant to condition 4(a) above to the prospective purchaser, failing which the purchaser of such unit may rescind the agreement of purchase and sale before accepting a deed to the unit being purchased that is in registerable form;

(c) On receipt of a request from a prospective purchaser of a unit, the condominium corporation shall, within 10 days of the request being made, provide a copy of the most recent reserve fund study;

(d) Conditions 4(a), (b) and (c) above shall cease to apply on the date that is one year following the date the condominium corporation has:

- (i) conducted its first comprehensive reserve fund study (a “comprehensive study”) and,
 - (ii) sent the required notice to the owners and copies to the auditor arising from such study in accordance with Section 94(9) of the *Condominium Act, 1998*.
- 9. The provisions in the Declaration and Description dealing with conditions 8(a) to (d) above, inclusive shall not be amended without the written consent of the City of Toronto.
- 10. The owner of the Site shall provide a tax certificate which confirms that all municipal taxes have been paid in full.
- 11. The owner of the Site agrees not to pass on, in the form of rent increases to tenants of the building residing in units on or before the date of registration of the condominium, any costs associated with the renovations or alterations of the building to comply with the conditions herein and which are related to converting the buildings or readying the buildings for condominium, or any increase in property taxes due to a change in the assessed value of the property identified in this application which may occur due to the condominium registration.

For the sake of clarity and without limiting the foregoing, any costs related to the following shall not be passed on to such tenants:

- (a) Window air conditioning units with split or built in systems, wherever possible,
- (b) Replacing elevator controls to state of the art electronics without any negative impact on design,
- (c) Brick and gargoyle restoration where necessary,
- (d) Installation of gas stoves where possible to increase hydro capacity for the building and individual units,
- (e) Exterior improvements as mandated by the City
- (f) New garbage and recycling room
- (g) Extended security camera system
- (h) Upgraded laundry facility and where possible in-suite laundry facilities

12. The owner shall, prior to registration of the plan of condominium (declaration and description) to the satisfaction of the Manager of Heritage Preservation Services:
 - (a) enter into a Heritage Easement Agreement with the City; and
 - (b) provide a restoration plan and schedule.

13. The owner shall, prior to registration of the plan of condominium (declaration and description) to the satisfaction of the Executive Director of Technical Services:
 - (a) install and maintain a “Yield to oncoming traffic” sign located within the underground garage to advise outgoing motorists of such; and
 - (b) include a clause in the declaration of condominium, advising prospective owners of the substandard parking spaces that these spaces are substandard in size and are intended for use of compact-sized vehicles only. The owner’s solicitor shall submit certification that the said clause has been included in the declaration of condominium.

14. The owner of the Site agrees that any units that remain rented to existing tenants will not be sold to individual condominium buyers until the tenant terminates his or her tenancy and the unit becomes vacant, unless the tenant consents to such a sale.

15. The owner of the Site shall enter into a Condominium Agreement satisfactory to, and at the discretion of, the City Solicitor whereby the owner agrees to ensure that all tenants of the building residing in units on or before the date of registration of the condominium, are notified of, and entitled to the right of security of tenure and the right of first refusal as referred to in section 51 of the *Residential Tenancies Act, 2006*, and that such rights will continue to be offered by the current owner and subsequent purchasers despite any changes to such Act.