



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

301-319 King Street West - Zoning By-law Amendment Application - Request for Directions Regarding LPAT Hearing

Date: December 11, 2019
To: City Council
From: City Solicitor
Wards: Ward 10 - Spadina-Fort York

REASON FOR CONFIDENTIAL INFORMATION

This report contains advice or communications that are subject to solicitor-client privilege. This report contains information regarding potential litigation.

SUMMARY

2477879 Ontario Inc., 1579661 Ontario Inc., Clarierville Holdings Limited, and Frances Danyliw (together the "Applicant") own lands municipally known as 301-319 King Street West (the "Subject Site"). The Subject Site is located on the south side of King Street West, west of John Street. The Subject Site currently contains four 3-storey buildings with commercial uses at grade. Each of the properties that compose the Subject Site have recognized heritage value: The properties at 301-303, 315, and 319 King Street West are designated heritage properties and the property at 305, 309, and 311 King Street West has been listed.

On April 4, 2013, the Applicant submitted a Zoning By-law Amendment application to the City proposing to amend former City of Toronto Zoning By-law 438-86 and City of Toronto Zoning By-law 569-2013 to permit the development of a 42-storey (174.6 metres in height, including mechanical penthouse) commercial building at 305-319 King Street West (the "Original Proposal"). The Original Proposal included office, hotel, and restaurant uses, as well as four levels of underground parking. Portions of the heritage buildings on the site were proposed to be retained and integrated into the 5-storey podium of the new building. The Original Proposal did not include any setbacks from the eastern property line, and therefore provided no tower separation to the neighbouring property. The total proposed gross floor area ("GFA") of the Original

Proposal was 38,343 square metres, with a floor space index ("FSI") of 31.5. The tower floor plate proposed was 900 square metres.

On December 3, 2017, the Applicant appealed the Application to the Ontario Municipal Board ("OMB") (now known as the Local Planning Appeal Tribunal ("LPAT")) as LPAT File No. PL171514. The first prehearing conference was held on October 3, 2018 before the LPAT. The second prehearing conference was held on May 13, 2019.

In October 2019, as a result of discussions between the Applicant and City staff, the Applicant modified their application and submitted revised plans to the City dated October 28, 2019 (the "Revised Proposal"). The Revised Proposal (which now also includes the property at 301-303 King Street West) proposes a 50-storey mixed-use residential and commercial building, with a reduced total height of 157 metres. As part of the Revised Proposal the Applicant also proposed a revised heritage retention strategy regarding the existing heritage buildings included as part of the development and submitted an updated Heritage Impact Assessment ("HIA"), prepared by Philip Goldsmith Architect, dated October 25, 2019.

On December 9, 2019, the Applicant's counsel, McMillan LLP, submitted to the City Solicitor a with prejudice settlement offer (the "Settlement Offer"). The Settlement Offer proposes a resolution of the LPAT appeal based on the Revised Proposal and further proposes to provide to the City a Section 37 cash contribution of \$3.2 million to be put towards community benefits.

The Revised Proposal and the Settlement Offer are described in further detail in the "Comments" section below.

The Settlement Offer is included as Public Attachment 1 to this report. The architectural plans showing the Revised Proposal dated October 28, 2019 by Scott Shields Architects Inc. are included as Public Appendix 1 to Public Attachment 1 to this report.

It should be noted that a related alterations report from Heritage Preservation Service ("HPS") dated October 29, 2019, is also intended to be considered by City Council at its meeting on December 17 and 18, 2019, as Item TE11.9 (the "Heritage Report"). The Heritage Report recommends that City Council approve alterations to the heritage properties on the Subject Site in accordance with Section 33 of the Ontario Heritage Act in order to permit a development pursuant to the Revised Proposal and the updated HIA, subject to certain conditions of approval. The Heritage Report also recommends that City Council designate the properties at 305, 309, and 311 King Street West under Part IV of the Ontario Heritage Act. The Heritage Report should be considered in conjunction with this report.

A copy of the Applicant's letter to the Toronto and East York Community Council regarding Item TE11.9 and the Heritage Report is also included as Public Appendix 2 to Public Attachment 1 to this report.

The purpose of this report is to request further instructions regarding the Settlement Offer in relation to the LPAT appeal.

City Planning has been involved in the preparation of this report.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to this report.
2. City Council authorize the public release of the confidential recommendations contained in the Confidential Attachment 1 to this report, if adopted by City Council.
3. City Council direct that all other information contained in Confidential Attachment 1 is to remain confidential at the discretion of the City Solicitor, as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

Adopting this report will have no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

On June 18, 2013, the Toronto and East York Community Council ("Community Council") considered a Preliminary Report from City Planning as Item TE25.60 and adopted an amended recommendation to schedule a community consultation meeting with notice to be provided to landowners and residents within 120 metres of the site, and to additional residents and owners to be determined in consultation with the Ward Councillor, with any additional mailing costs to be borne by the Applicant. A copy of Community Council's decision can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.TE25.60>

On November 12, 2019, the Toronto Preservation Board ("TPB") considered a heritage alterations report from HPS (the "Heritage Report") as Item PB11.2. The TPB decision recommended to Community Council that the properties at 305, 309, and 311 King Street West be designated pursuant to Part IV of the Ontario Heritage Act, but did not recommend the alterations to the existing heritage buildings to permit the development. A copy of the TPB's decision can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.PB11.2>

On December 3, 2019, Community Council considered the Heritage Report and the recommendations from the TPB as Item TE11.9. Community Council decided to Report for Action with Confidential Attachment - 301-319 King Street West - Request for Directions Regarding LPAT Hearing

forward consideration of the Heritage Report to City Council without recommendations. A copy of Community Council's decision can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.TE11.9>

COMMENTS

As noted above, the Applicant has submitted a Revised Proposal and Settlement Offer to the City. The significant changes in the Revised Proposal and Settlement Offer include the following:

- The Revised Proposal will be a 50-storey mixed-use residential and commercial building. The first three floors, including the ground floor, will include commercial uses with the remainder of the building comprising of residential units.
- The total Commercial GFA is 3,252.43 square metres and the total Residential GFA is 28,440.24. The overall GFA of the proposal has been reduced from 38,343 square metres in the Original Proposal to 31,692.67 square metres in the Revised Proposal.
- The proposal FSI has been reduced from 31.5 down to 21.62.
- The overall height of the development has been reduced from 174.6 metres in the Original Proposal down to 157 metres in the Revised Proposal.
- The western tower setback has been increased to 11.5 metres. Balconies encroachments into the western setback have now been limited, with the Revised Proposal including Juliet-style balconies on the west façade that only protrude 0.5 metres into the western setback.
- The eastern tower setback is now proposed to be 10 metres. Balcony protrusions into the setback have been removed, and the Revised Proposal now shows no balconies within that eastern setback.
- The bottom of the tower, directly above the heritage buildings at the base, has been tapered, setback, and angled to better preserve the existing heritage buildings.
- HPS staff, in the Heritage Report in Item TE11.9 that is also to be considered by City Council on December 17 and 18, 2019, have recommended approval of the alterations to the existing heritage buildings required to permit the Revised Proposal.
- The Revised Proposal has increased the total amenity space in the development to 1,798 square metres, comprised of 945.17 square metres of indoor amenity space and 853.10 square metres of outdoor amenity space.

- The Revised Proposal includes 41 3-bedroom units, which accounts for 10 percent of the total unit mix in the building.
- Finally, the Applicant has offered to the City a Section 37 cash contribution of \$3.2 million to be used towards community benefits.

The City Solicitor requires further instructions regarding the Settlement Offer. This report is about litigation before the LPAT and contains advice or communications that are subject to solicitor-client privilege. Attachment 1 to this report contains confidential advice and should be considered by Council *in camera*.

CONTACT

Alexander J. Suriano, Solicitor, Planning & Administrative Tribunal Law; Tel: (416) 392-4827; Fax: (416) 397-5624; Email: alexander.suriano@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Public Attachment 1 - Settlement Offer Letter dated December 9, 2019.
2. Public Appendix 1 to Public Attachment 1 - Architectural Plans dated October 28, 2019 showing the Revised Proposal (on file with the City Clerk for the purpose of the December 17 and 18, 2019 City Council meeting).
3. Public Appendix 2 to Public Attachment 1 - Copy of Letter from Applicant to Toronto and East York Community Council dated December 2, 2019 regarding Item TE11.9.
4. Confidential Attachment 1 - Confidential Information.