

Supplementary Report - 144 and 150 Berry Road – Zoning By-law Amendment Application

Date:	March 8, 2016
To:	City Council
From:	Chief Planner and Executive Director, City Planning Division
Wards:	Ward 5 – Etobicoke-Lakeshore
Reference Number:	P:\2016\ClusterB\PLN\City Council\CC16044 193159 WET 05 OZ (Tracking Number: 21037)

SUMMARY

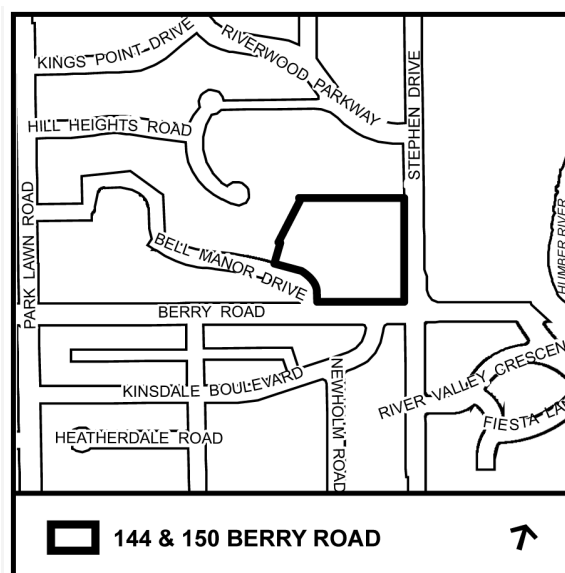
On February 23, 2016, Etobicoke York Community Council considered a staff report entitled "144 and 150 Berry Road – Zoning By-law Amendment Application – Final Report". The Community Council decision and report can be viewed at the following link: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EY.12.1>

This Supplementary Report provides an amendment to the previously submitted Final Report from the Director, Community Planning, Etobicoke York District, dated February 12, 2016.

The amendment relates to:

- Attachment 11 (Draft Section 37 Term Sheet for Leased Premises at the project to be constructed at 144 and 150 Berry Road (the "Project"), which was not included in the February 12, 2016 report.

The Final Report that was before Etobicoke York Community Council on February 23, 2016 indicated that Attachment 11 would be available prior to the City Council Meeting on March 10, 2016.



RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council replace Attachment 11 (Draft Section 37 Term Sheet for Leased Premises at the project to be constructed at 144 and 150 Berry Road (the "Project") to the Final Report dated February 12, 2016 from the Director, Community Planning, Etobicoke York District, with Attachment 11 (as attached to this report), dated March 8, 2016 from the Chief Planner and Executive Director, City Planning Division.

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SIGNATURE

Jennifer Keesmaat, MES, MCIP, RPP
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City Planning Division

ATTACHMENTS

Attachment 11: Section 37 Term Sheet for Leased Premises at the project to be constructed at 144 and 150 Berry Road (the "Project")

**Attachment 11: Section 37 Term Sheet for Leased Premises at the project to be
constructed at 144 and 150 Berry Road
(the “Project”)**

1. **Owner:** The term “Owner” in the Term Sheet and Section 37 Agreement shall refer to the owner, future successors and assigns.
2. **Leased Premises:** The Owner of the property municipally known as 144 and 150 Berry Road (the “Owner”) shall enter into a lease with a not-for-profit food co-operative acceptable to the City and the Owner (the “Tenant”), for a period of ten (10) years, for ground floor premises in the Project having an area of not less than 810 sq.m. (8,718 square feet), (the “Leased Premises”) substantially in the location and as set out in Attachment 1 to Attachment 5 relating to the Project prepared by 2384903 Ontario Inc. (VANDYK), to be constructed on the terms set out in this Term Sheet, at the sole expense of the Owner, and such other terms as are acceptable to the parties acting reasonably.
3. **Calculation of Area:** The area of the Leased Premises shall be calculated by an Ontario Land Surveyor or architect acceptable to the City. At the Owner’s cost, the Land Surveyor or architect shall prepare an area certificate for the Leased Premises in accordance with BOMA standards, and deliver the same to the City within 30 days of substantial completion of the Leased Premises.
4. **Leasehold and Tenant Inducement:** The Lease shall contain the following tenant inducements:
 - (a) Base rent at \$20 per square foot in the Lease but with a reduction of \$5 per square foot included in the Lease.
 - (b) Six (6) month completely rent free period (base rent and TMI).
 - (c) Owner to provide a full turnkey construction build-out of space that includes the Base Building Standard improvements set out in in this Term Sheet and in Appendix "2" attached hereto, together with additional tenant improvements having a maximum value of \$300,000.00 (the "Tenant Allowance"), which will be agreed to by the parties a future date.
 - (d) Owner to cover the M & I portion of TMI to a maximum of \$8 per square foot.
5. The business terms of the Lease are set out in Appendix “1”. The Lease document shall incorporate the terms set out in this Term Sheet and the Section 37 Agreement, and such other non-monetary terms and conditions acceptable to the parties, acting reasonably, and in a form acceptable to the City Solicitor.
6. **Options to Extend:** Two (2) five (5) year options to extend at market rates shall be provided in the Lease.

7. **Subsidy:** Appendix “1” further sets out the details of the tenant inducements offered by the Owner, including a summary of the amounts offered through the Owner’s Section 37 contribution.
8. **Property Taxes:** The Owner acknowledges that the City has the right, in its discretion, to request Council to exempt the Leased Premises from taxation for municipal and school purposes if the City considers that the Leased Premises may be used as a municipal capital facility pursuant to Section 252 of the *City of Toronto Act, 2006*. Provided Council grants satisfactory approval to this effect, the Owner shall, if required by the City, enter at its sole cost and expense into the necessary municipal capital facility agreement pursuant to Section 252(1) of the *City of Toronto Act, 2006*, as amended, in a form acceptable to the City Solicitor and legal counsel for the Owner and to pass the full benefit of such exemption on to the Tenant during the entire period of any such exemption.
9. **Alternate Tenant:** If the Lease is terminated before the end of the 10 year term of the Lease, the Owner may enter into a new lease with a tenant which meets the criteria in paragraph 2 of this Term Sheet, provided that if funds incurred by the Owner to date by the provision of the tenant inducements referred to in clause 4(c) of this Term Sheet are equal to or greater than \$700,000.00, the Owner may enter into a new lease with a tenant which does not meet the criteria in paragraph 2 of this Term Sheet.
10. **Elect Cash Contribution/Damage and Destruction/Early Termination:** If: (i) the Lease is not fully executed prior to the date before the issuance of the first above grade building permit for a building containing residential units on the Project, or such other date as may be mutually agreed by the Owner and the City, or (ii) the City, by written notice to the Owner given before the Lease fully executed and entered into, elects to secure improvements to The Queensway instead of securing space for a not-for-profit food co-operative, or (iii) during the term of the Lease the Tenant (or a subsequent tenant), or a subtenant (or subsequent subtenant) is unable to continue with rent payments or is in default of the Lease, or (iv) the Leased Premises are damaged and destroyed, and such damage in the reasonable opinion of an architect acceptable to both parties, cannot be repaired and the Leased Premises re-opened for business, then upon notice by the Tenant and/or the Subtenant to the Owner, the Lease is terminated, and the Owner will forthwith notify the City and pay to the City, an adjusted Section 37 contribution having a value of \$1,000,000.00, comprised of the splash pad valued at \$300,000.00 located in the easement for publicly accessible open space, and a cash payment in the amount of \$700,000.00, less funds incurred by the Owner to date by the provision of the tenant inducements referred to in clause 4 (c) of this Term Sheet.
11. **Notice of Default:** In the event of Lease default, the Owner shall provide prompt notice to the City that: (i) the Owner has issued a default notice to the Tenant and/or the subtenant, or (ii) the Tenant and/or the subtenant has issued a notice of voluntary surrender of the Lease.

12. **Form and Timing of Lease:** The Lease with respect to the Leased Premises shall be executed no later than such time as the first above grade building permit is issued for a building containing residential units (the “**Conveyance Date**”), or such other date as may be mutually agreed by the Owner and the City. The terms of the Lease shall be acceptable to the Chief Corporate Officer, the Owner and the Tenant, acting reasonably.
13. **Other Terms Relating to Leased Premises:** The Leased Premises shall have access to and use of all areas located in the Project reasonably necessary for the operation, use, repair and maintenance of the Leased Premises. For greater certainty, further particulars of the Leased Premises follow:
- (a) The Leased Premises shall have access and use of the loading and garbage areas of the Project. All of the access routes shall be functional.
 - (b) The Owner shall provide at its cost the required containers for waste removal.
 - (c) The Tenant shall pay for utilities consumed in the Leased Premises. The utilities will be separately sub-metered where possible, and paid by the Tenant directly to the Owner with no administration fee or charge whatsoever. The separate meters or sub-meters shall be installed by the Owner at the Owner’s expense.
 - (d) The Leased Premises shall be heated and cooled by the building HVAC system.
 - (e) After the 6 month completely rent free period, the Tenant shall pay a pro-rata share of operating costs for shared facilities of the Project it has continuous and regular use of, including but not limited to the access driveway, loading area, garbage disposal area, the service corridors to get to the above areas and service elevator (the “**Shared Facilities**”). The aforementioned percentage will be determined in accordance with BOMA standards.
 - (f) The Leased Premises shall comply with the *Accessibility for Ontarians with Disabilities Act, 2005*.
 - (g) The Owner shall construct and complete the Leased Premises in accordance with the provisions of this Term Sheet and attached Appendix "2". The Owner agrees to consult with the City and its Tenant on the construction and update the City and Tenant periodically, acting reasonably, on the status of the construction.
 - (h) The Owner shall provide a one-year construction warranty for the Leased Premises and agrees to correct any deficiencies forthwith, and in any event within three months. If the deficiencies are not corrected to the

satisfaction of the Chief Corporate Officer within three months, the City may correct such deficiencies and recover said costs from the Owner.

- 14. Access and Cost-Sharing:** The Lease will contain provisions to facilitate the integration of the various elements of the Project and the Leased Premises. The Lease will contain terms acceptable to the Chief Corporate Officer and in a form satisfactory to the City Solicitor and shall include the following:

- (a) The Tenant, its licensees, occupiers, invitees, users, patrons *et al.* of the Leased Premises shall have access and use of the Shared Facilities.
- (b) The Tenant shall not be responsible for repair, maintenance, or replacement, including capital expenditures, for any of the Shared Facilities except to the extent of its contribution for such costs as set out herein.
- (c) The Tenant shall have full access to the Shared Facilities at all times and the Lease may contain gross up provisions for costs in accordance with BOMA standards.

- 15. Financial Matters:** The Owner acknowledges that the Leased Premises constitute a Section 37 benefit. The City will not be responsible for any costs associated with the Conveyance of the Leased Premises, except as set out in this Term Sheet or the Section 37 Agreement.

16. Interior Construction (Landlord's Work):

- (a) The Owner shall construct the Leased Premises to a Base Building Standard entirely at its own cost. For the purpose of this Term Sheet, "**Base Building Standard**" means: basic improvements including but not limited to, concrete floors (ready for application of a final finish); perimeter walls dry-walled, taped, sanded and primed; life safety systems and emergency lighting; electrical panel; heating and cooling and ventilation system properly sized to adequately heat, cool and ventilate the Leased Premises; and plumbing to demised premises (excluding internal distribution) as set out in this Term Sheet, including the attached Appendix "2". For greater clarity, the Tenant Allowance will be used to improve the space above and beyond the Base Building Standard improvements and will not be expensed in the construction of the Base Building Standard improvements.
- (b) The Leased Premises will meet all the Ontario Building Code requirements, City By-law requirements and accessibility requirements, as well as health and safety requirements assuming the space is operated as an open-concept space on the first floor. The Tenant and the Owner's architect will work cooperatively to properly construct the Leased Premises, with a quality of finishes consistent with the City standards and

requirements necessary to operate the space as set out in this Term Sheet, as well as any additional matters constituting the Tenant Allowance to which the parties, acting reasonably, agree. The full turnkey construction build-out of space will be collectively comprised of the Base Building Standards improvements and the Tenant Allowance improvements referred to in clause 4(c) hereof.

- (c) For greater certainty, the Owner acknowledges and agrees that it will be responsible at its sole cost, as part of the TMI, for the initial and ongoing responsibility and costs to install, supply, repair and maintain all the mechanical components servicing the Leased Premises, which without limitation includes the HVAC system servicing the Leased Premises, the electrical power and panel coming into the Leased Premises, the plumbing coming into and outgoing from the Leased Premises, including the installation of check meters for incoming hot and cold water supply lines, the sprinkler system and life and safety equipment, and the required intake and exhaust ventilation system.

APPENDIX “1”

Business Lease Terms

Landlord:	VANDYK group of companies (c/o 2384903 Ontario Inc.)
Development:	Stonegate Plaza Redevelopment
Tenant:	A Not-for-Profit Food Co-op acceptable to the Owner and the City
Possession Date:	Tentative March 1 st 2017
Rent Free Period:	180 days from date of possession (Base Rent and TMI).
Base Rental Rate:	\$ 20.00 per SF
Rental Rate after Reduction:	Reduced rental rate after Section 37 contribution is \$ 15.00 per SF.
TMI:	\$ 15.00 per SF. Estimated
Lease Term:	10 years
Lease Extension:	2 – 5 year options to renew at market rates.

Rent, TMI and Subsidy Summary

			Yearly	Monthly	10 Year
Market rent value:	\$ 20.00	SF	\$ 174,540.00	\$ 14,545.00	\$ 1,745,400.00
Reduced rent value:	\$ 15.00	SF	\$ 130,905.00	\$ 10,908.75	\$ 1,309,050.00
Variance in rent from Market:	\$ 5.00	SF	\$ 43,635.00	\$ 3,636.25	\$ 436,350.00
TMI:	\$ 15.00	SF	\$ 130,905.00	\$ -	\$ 1,309,050.00
Tax portion of TMI:	\$ 7.00	SF	\$ 61,089.00	-	\$ 610,890.00
M&I portion of TMI:	\$ 8.00	SF	\$ 69,816.00		\$ 698,160.00
6 month Base Rent and TMI free period				\$ 25,453.00	\$ 152,722.00

Summary – Value of Section 37 Contribution with 10 Year Lease

Tenant Improvement Construction Build Out Inducement:	\$ 300,000.00
Rent Discount (reduction from \$20 to \$ 15 per SF):	\$ 436,350.00
Rent and TMI Free Period of 6 months (\$14,545 per month rent and \$10,908 per month TMI):	\$ 152,722.00
M & I Discount (based on estimate of \$8 per SF)	<u>\$ 698,160.00</u>
Sub-total of Contributions re: leased space:	\$ 1,587,232.00
Splash Pad	<u>\$ 300,000.00</u>
Total:	\$ 1,887,232.00

APPENDIX “2”
PLANS, OWNER'S APPROVAL AND CONDUCT OF WORK

1. After the completion of the architect and engineer's base building drawings, the Owner agrees to work with the Tenant and to provide to the City and the Tenant, at its sole cost, a floor plan of the Project and any other drawings required by the City and the Tenant for the review and design of the Leased Premises. The Owner shall pay the total fee or expense charged or incurred by the Owner's architect and consultants' work in approving the drawings and the as-built architectural and engineering plans. The Owner will also, at its sole cost, review and do periodic inspection of the site and construction of the Leased Premises.
2. The Owner shall work with the Tenant to prepare the design plans of the Leased Premises. Upon the City's and the Tenant's satisfaction, the City shall provide written approval to the Owner that the requirements, drawings, specifications, construction schedules, sketches or blueprints prepared by the Owner's architect or engineer and any other documents or permits necessary for the Tenant's work, illustrating the interior layout, contain sufficient detail, including how it affects the mechanical systems, electrical systems, fire/life safety and structural elements affecting the building. All copies of as-built drawings with any changes are to be prepared by the Owner, which shall be retained by the Owner with a copy provided to the City for its records.
3. Prior to performing any work, the Owner shall obtain all necessary consents, permits, licenses, certificates and inspections from all municipal, governmental and regulatory authorities having jurisdiction, and shall make available to the City and Tenant copies of same and shall post permits as required.
4. The Owner shall be responsible, at the Owner's cost, for performance of fire protection work in the Leased Premises as constructed to Base Building Standards together with any other Owner-related work in the Shared Facilities of the building.
5. All of the work by the Owner shall be performed by competent workmen which will not result in work stoppages or delays in the construction and completion of the Leased Premises.
6. The Owner is responsible for the cost of the removal of all construction debris.
7. The standards set out below are the Base Building Standard improvements that will form part of the turnkey construction build-out. The Owner agrees to, at its own expense, install or perform the work required for the Base Building Standard improvements before receiving occupancy for the Leased Premises. In addition, the Owner is also responsible for Tenant Allowance improvements having a value of \$300,000, which improvements will be decided upon by the parties at a future date.

WALL:	All exterior walls, columns and Leased Premises demising walls (i.e. only those demising walls required pursuant to this Term Sheet; see below Plumbing & Drainage). Leased Premises demising walls are on light gauge metal studs.
FLOORS:	The Leased Premises floors shall be finished with steel trowelled concrete, ready for application of a final finished product. If the Tenant wishes to finish the floor in the Leased Premises, the Tenant may select from the Owner selection, at no mark-up cost to the Tenant.
PLUMBING & DRAINAGE:	The Owner at its sole cost shall provide one washroom in the Leased Premises, unless there is access from the Leased Premises to a bathroom on the main floor as a Shared Facility. If the Ontario Building Code requires more than one washroom, the Owner at its sole cost shall provide the required washrooms in the Leased Premises. For greater certainty, the Owner shall construct walls for the required washroom(s) and construct the necessary sanitary and water connections to the washroom(s). The Owner at its sole cost shall install in each unit a water check meter, and water usage for the Leased Premises shall be at the Tenant's expense.
MECHANICAL SYSTEM:	Mechanical ventilation in compliance with Ontario Building Code, ASHRAE, and best industry practice, including fresh air and exhaust air, from an HVAC system will be ducted and distributed to the Leased Premises necessary to operate as an open-concept office space, not including internal distribution.
ELECTRICAL SYSTEM:	Electrical panel, electrical service to a disconnect, life safety systems and emergency lighting for an open concept vacant space. The Owner shall provide the appropriate power to a minimum 200 Amp disconnect. Electrical Service for the Leased Premises will be direct billing meter or check metered and power consumption within the Leased Premises shall be at the Tenant's expense.
SPRINKLER SYSTEM:	The Owner at its sole cost shall provide a basic sprinkler system with upturned heads to suit an open-concept office space and required demised space, as set out in this Term Sheet.
COMMUNICATIONS:	A minimum of three 1" empty conduits will be provided from telephone to the Leased Premises in locations to be agreed upon by the Tenant and the Owner.