

## **342-346 Davenport Road - Zoning By-law Amendment Application - Request for Direction Report**

**Date:** May 17, 2017

**To:** City Council

**From:** City Solicitor

**Wards:** Ward 20 Trinity-Spadina

### **REASON FOR CONFIDENTIAL INFORMATION**

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This report contains advice or communications that are subject to solicitor-client privilege.

### **SUMMARY**

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This application proposes a 10-storey, 40 metre high (excluding the mechanical penthouse) mixed-use building at 342-346 Davenport Road. The proposed development includes 35 residential units, approximately 771 square metres of retail-commercial space and 57 parking spaces in a four-level underground parking garage.

The purpose of this report is to seek further instructions for the Ontario Municipal Board ("OMB") hearing which is scheduled to commence September 5, 2017.

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

### **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council adopt the confidential recommendations in Confidential Attachment 1.
2. City Council authorize the public release of the confidential recommendations in Confidential Attachment 1 and Attachment A, if adopted by City Council.

3. City Council direct that all other information contained in Confidential Attachment 1 is to remain confidential as it contains advice which is subject to solicitor-client privilege.

## **FINANCIAL IMPACT**

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There is no financial impact.

## **DECISION HISTORY**

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At its meeting of February 23, 2016, Toronto and East York Community Council considered a preliminary report, a copy of which is available on the City's website at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.TE14.29>

The owner appealed the zoning by-law amendment application to the OMB citing City Council's failure to make a decision within the prescribed time frames set out in the Planning Act. A hearing is scheduled to commence September 5, 2017.

## **COMMENTS**

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On October 16, 2015, the Zoning By-law amendment application for the subject site was submitted. A post-application Community Meeting was held on December 8, 2015 by the Ward Councillor to discuss the project and initial modifications to it. A Preliminary Report was considered by Toronto and East York Community Council on February 23, 2016. On March 9, 2016, a Community Meeting was held to discuss the Rezoning Application. On March 29, 2016, the Zoning By-law application was appealed to the Ontario Municipal Board ("OMB"). Hearing dates are scheduled for 10 days commencing on September 5, 2017.

On April 6 and 7, 2017 the parties attended an OMB mediation. After the mediation, the owner's solicitor delivered a settlement offer ("Settlement Offer") to the City Solicitor. Attached as Appendix "A" to this report is a "With Prejudice" Settlement Offer in the form identified in the revised plans.

The proposal, submitted to the City on October 16, 2015 contemplated a 10-storey building at 40 metres in height (45 metres including the private amenity/mechanical penthouse space) at 342-346 Davenport Road. The Settlement Offer reduces the proposed building to nine storeys, 32 metres in height (35.5 metres including private amenity/mechanical penthouse space).

The original application proposed a total of 35 residential units of which all are two-bedroom units. The Settlement Offer provides a total of 31 residential units, of which all are two-bedroom units.

The original application proposed 6,300 square metres of residential floor space. The Settlement Offer building statistics show 6,112 square metres of residential floor space.

The original application proposed 771 square metres of retail uses. The Settlement Offer plans show a reduced retail space of 701 square metres on the ground floor of the nine-storey building.

The original application resulted in a floor space index (FSI) of 6.4 for the site. The Settlement Offer building statistics show a FSI of 5.62 for the site.

The original application proposed 57 vehicular parking spaces. The Settlement Offer provides a reduction to 42 parking spaces.

The original application proposed 35 bicycle parking spaces. The Settlement Offer building statistics provides for 34 bicycle parking spaces for resident and visitors.

The original application had no Type G loading space. The Settlement Offer provides for a rear lay-by area, which is large enough to accommodate a Type-G loading space.

The original application had less than a one-metre rear setback at grade and no stepbacks for the first five floors at the rear, with the exception of the two inset balconies on each of those five levels. The Settlement Offer architectural plans show a 2.4-metre setback for most of the rear façade at grade and has a series of three-metre stepbacks starting at the top of the fourth floor at the north end and top of the fifth floor on the south end of the rear elevation.

A number of issues were identified in the Preliminary Planning Report, and the City Divisions' comments on the proposal. The key issues were: the height and scale of the building; the need for increase in all building setbacks and stepbacks; the impact on the adjacent mixed-use residentially-converted industrial building units and residentially-occupied townhouses on the west side of Bedford Road and need for Type 'G' and 'B' loading spaces based on the number of dwelling units and retail space.

The proposal is situated on the northeast side of Davenport Road, between Bedford Road and Dupont Street, in an area identified as the "Davenport Triangle". The site is comprised of three properties at 342, 344 and 346 Davenport Road. The site is generally rectangular in shape. It is a through lot to Designer Walk Lane and has a V-shaped rear lot line at the laneway.

The proposed building is one property removed from a recently approved seven-storey (24 metre) mid-rise building at 350 Davenport Road that went through the Committee of Adjustment approval process. That building also provided similar setbacks and stepbacks to the rear lane.

The Settlement Offer provides for a series of modest changes. The proposed built form introduced a series of stepbacks that start at 5.5 metres above grade then progress upward with additional stepbacks at 11.5 metres, 14.5 metres, 21.0 metres and 28.0 metres.

A Type G loading space has been accommodated at grade which does not rely on backing into the lane or stopping within the lane. The ground floor has been set back to allow a truck to enter and exit the loading area in a forward motion.

Additional lane setbacks have been proposed in the settlement plans as follows. For the north portion of the building, a second 3.0 metres setback is proposed above the seventh floor or 24.5 metres. For the south portion, a similar setback of 3.0 metres is proposed above the eight floor or 28.0 metres.

Additional settlement conditions include limitations on the mechanical penthouse height of 3.5 metres rather than the City's standard of 5.0 metres. Allowances for additional height up to 1.5 metres are allowed if a setback of 1.0 metres is provided.

There were also some conditions established for the south-facing balconies to enhance the privacy for the adjacent townhouse residents. Provisions for balcony reductions through the introduction of planters and opaque railings have been included to be implemented through Site Plan control.

The Settlement Offer states the following: "That after the release of the Board's Order that authority shall be provided by City Council (or Toronto and East York Community Council under delegated authority) to the Chief Building Official to issue a demolition permit, pursuant to Chapter 363 of the Municipal Code."

## **CONTACT**

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Ray Kallio, Solicitor, Planning and Administrative Law, Legal Services Tel: (416) 397-4063 Fax: (416) 397-5624 E-mail: [Ray.Kallio@toronto.ca](mailto:Ray.Kallio@toronto.ca)

## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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Appendix A

Confidential Attachment 1 - Confidential Recommendations

## Appendix A - Goodmans Settlement Offer



Barristers & Solicitors

Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211  
Facsimile: 416.979.1234  
goodmans.ca

Direct Line: 416.597.4299  
dbronskill@goodmans.ca

May 10, 2017

Our File No.: 152019

### **WITH PREJUDICE**

Legal Services, City of Toronto  
Metro Hall, 55 John Street, 26<sup>th</sup> Floor  
Toronto, ON M5V 3C6

### **Attention: Ray Kallio**

Dear Sirs/Mesdames:

### **Re: 342-346 Davenport Road**

We are solicitors for 346 Davenport (Yorkville) Developments Limited, who have submitted a rezoning application regarding the lands known municipally as 342-346 Davenport Road (the "Property"). Further to the mediation held by the Ontario Municipal Board on April 6-7, 2017, with the City, the Davenport Triangle Residents Inc. and the Annex Residents Association, we are writing on a with prejudice basis to propose a settlement of our client's appeal. This settlement offer remains open until the end of the City Council meeting scheduled to commence on May 24, 2017.

### **With Prejudice Settlement**

The with prejudice settlement offer is based on the attached plans prepared by RAW Design.

The fundamental components of the settlement offer are as follows:

1. The height has been reduced from 10-storeys to nine-storeys and from 40.5 metres to the top of the roof to 32.0 metres to the top of the roof, as measured at Davenport Road.
2. The height of the mechanical penthouse would generally be limited to 3.5 metres above the top of the roof, for a maximum total height of 35.5 metres, as measured at Davenport Road. Individual components of the mechanical equipment may project to a height of 4.5 metres. If an enclosure is required for any such individual components, it would be set back 1.0 metres from the edge of the mechanical penthouse.

3. The ground floor will be setback from the laneway to enable provision of a lay-by area, which will be large enough to accommodate a Type-G loading space on the Property under the cantilevered building.
4. The various setbacks/stepbacks at the rear are shown on the attached sketches.
5. Rear balconies would be limited to the southern portion of the building, with planters/screening at the northern edge of such balconies, to be finalized during the site plan approval process.
6. Planters/screening will be provided on the south facing balconies for floors 3 and 4, to be finalized during the site plan approval process.
7. Certain windows on the rear face will be relocated to respect an 11.0 metre separation distance from such windows to the adjacent building to the northeast.
8. Our client would agree to consult with the Davenport Triangle Residents Inc. and the Annex Residents Association during the site plan approval process.
9. Our client will provide a Section 37 contribution of \$100,000, to be directed towards improvements in adjacent Designer's Walk Lane.
10. City Council (or Toronto and East York Community Council under delegated authority) shall provide authority to the Chief Building Official to issue a demolition permit, pursuant to Chapter 363 of the Municipal Code, subject to a condition that the Ontario Municipal Board has issued a final Order regarding the rezoning appeal.

Our client is extremely appreciative of the good faith efforts of all parties in this matter and hopes that City Council will accept this with prejudice settlement offer. As noted above, this settlement offer remains open until the end of the City Council meeting scheduled to commence on May 24, 2017. If City Council does not accept this with prejudice settlement offer at that meeting, our client reserves its right to pursue approval of its original application.

Yours truly,

**Goodmans LLP**



David Bronskill

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