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March 19, 2018

**Without Prejudice and Confidential**

Our File No.: 141723

**Via E-mail**

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

**Attention: Wendy Walberg, City Solicitor & Amanda Hill and Daniel Elmadany, Solicitors  
for the City of Toronto**

Dear Sirs/Mesdames:

**Re: OMB Case No. PL160825  
390-398 Spadina Road (the "Property")**

As you know, we are solicitors for the appellant in the above-noted matter. We are writing on a without prejudice basis to propose a settlement of our client's appeal. This settlement offer is open until the conclusion of the City Council meeting scheduled to commence on March 26, 2018, after which it should be considered as withdrawn.

**Without Prejudice Settlement Offer**

The settlement offer is based on the attached without prejudice plans dated March 14, 2018. Although labelled as without prejudice, these plans can be released and treated as public in the event that City Council adopts recommendations to settle this matter based on the without prejudice plans and the terms set out in this letter.

In particular, we note the following aspects of the revised without prejudice plan:

- a. the height of the building (inclusive of mechanical equipment and parapets) will be a maximum of 24.91 metres, as shown from average grade, as follows:
  - i. the height to the top of the mechanical penthouse is 24.21 metres (exclusive of any waterproofing and/or insulation required above the roof slab, as shown on the without prejudice plans);

- ii. the only other elements permitted to project above the 24.21 metres are limited to the parapet height above the mechanical penthouse of 0.7 metres and an exhaust shaft of 1.00 metres in the general location shown on pages 9 and 10 of the without prejudice plans, subject to technical and/or minor modifications to the satisfaction of the Chief Planner and Executive Director, City Planning, with no other permitted vertical projects above the mechanical penthouse except those identified in this subparagraph (ii);
- iii. the position of the above-noted exhaust shaft shall not exceed a horizontal projection of 1.25 metres from the mechanical penthouse towards Spadina Road, as shown on page 10 of the without prejudice plans;
- iv. the height of the podium (inclusive of all projections and parapets) shall be a maximum of 14.5m and shall consist of three (3) residential floors and one (1) commercial/retail floor at grade, as shown on page 1 of the without prejudice plans and the height of the podium (exclusive of any waterproofing and/or insulation required above the roof slab) shall be a maximum of 13.9 metres, with the exception of the railings on the 5<sup>th</sup> floor, shown as projecting vertically above this height on the without prejudice plans;
- v. the height of all railings, including those mentioned in subparagraph (iv) above, shall be no greater than 1.1 metres, and subject to subparagraph (vi) below;
- vi. there shall be no vertical or horizontal projections, including all railings and parapets, into the line of sight angular plane as shown on page 1 of the without prejudice plans (the "Angular Plane");
- vii. there shall be no permanent vertical projections on the walk-up terraces shown on page 10 of the without prejudice plans;
- viii. the maximum height of any parapet shall be no greater than 0.7 metres but any such parapet shall not project into the Angular Plane, and any railing behind a parapet shall also not be visible from the street;
- ix. the fifth floor shall be stepped back a minimum of 4.7 metres from the east property line and any terraces on the fifth floor, including railings, parapets and projections, must all be within the Angular Plane;
- x. the sixth floor shall be set back an additional 4.85 metres from the fifth floor for a total of a 9.55 metre stepback from the east property line, and the sixth floor and any terraces on the sixth floor, including railings, parapets and projections, must all be within the Angular Plane;

- xii. the height of the building from average grade to the roof of the sixth floor shall be a maximum of 20.46 metres, exclusive of the parapet which may project above this height but shall not project into the Angular Plane, and exclusive of waterproofing and insulation as shown on page 1 of the without prejudice plans; and,
  - xiii. the privacy screen dividing the walk-up terraces, as shown on page 10 of the without prejudice plans, shall be no greater than 1.83 metres (or 6 feet) in height, and the railings, fences and screens surrounding these walk-up terraces shall be no greater than 1.2 metres in height.
- b. the building will have the following relationship to the heritage property at 404 Spadina Road:
- i. the first four floors in the base building are intended to reflect the horizontal datum lines of the adjacent heritage building at 404 Spadina Road, including the retail store front datum line of this adjacent building;
  - ii. the 4th floor is setback back at least 5.5 metres from the south elevation of the heritage building at 404 Spadina Road to provide for a reveal at the north east corner of the base building; and,
  - iii. the terrace in the fourth floor stepped back area above the 3rd floor area shall be set back to a minimum of 1.7 metres from the heritage building at 404 Spadina Road and the terrace shall be stepped back 2.5 metres from Spadina Road, east property line;
- c. there will be a minimum of two retail units on the ground floor;
- d. there will be a maximum of 4,850 square metres of residential gross floor area, inclusive of the walk-up indoor areas above the sixth floor, subject to technical and/or minor modifications to the satisfaction of the Chief Planner and Executive Director, City Planning,
- e. the walk-up indoor areas above the sixth floor, as shown on page 10 of the without prejudice plans, shall contain no more than 65 square metres of residential gross floor area, inclusive of the staircases, and this maximum is not subject to any increases for technical or minor modifications;

- f. the owner agrees to a 1.98 metre lane widening, to be conveyed to the City free and clear of all encumbrances, as shown at the rear of the Property;
- g. the mechanical penthouse, inclusive of the walk-up indoor areas, shall be a maximum of 19.03 metres in length, with a maximum width of 9.90 metres intended to curve towards the outer edges from the mid-point of the mechanical penthouse (at approximately 9.52 metres) by approximately 0.9 metres, to a maximum width at the outer edges of the mechanical penthouse of 9.01 metres, as shown on page 10 of the without prejudice plans.
  - i. The mechanical penthouse shall be set back a minimum of 2.4 metres from the rear property line, on the eastern edge of the lane widening.
  - ii. the mechanical penthouse, including the walk-up indoor areas, shall be set back from the north edge of the 6<sup>th</sup> floor below by a minimum of 5.445 metres and set back from the south edge of the 6<sup>th</sup> floor below by a minimum of 5.44 metres, as shown on page 10 of the without prejudice plans.
- h. the walk-up terraces above the 6<sup>th</sup> floor shall be setback from the north, east and south edges of the building roof on the 6th floor a minimum of 4.0 metres, with the minimum 4.0 metre setback measured from the setback at the north sixth floor building edge of roof at 2.975 metres, 4.0 metres from the east sixth floor building edge and from the setback at the south sixth floor building edge of the roof at 3.0 metres;
- i. the maximum number of residential dwelling units shall be 34, subject to minor modifications through detailed design, to the satisfaction of the Chief Planner and Executive Director, City Planning;
- j. the proposal shall provide a Type G loading space, with the potential to permit a Type B loading space if the dwelling unit count decreases to 30 units or fewer;
- k. a revised Ground Floor plan shall be provided to illustrating the dimensions of the 5.0 metre at-grade pedestrian clearway easement, which shall be conveyed to the City; and,
- l. updated parking level plans shall be provided to illustrate the dimensions and allocation of visitor and resident parking spaces, and the ramp slopes leading to the underground parking garage and parking levels, to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services, and to provide details respecting the number of bicycle parking spaces.

Our client would also agree to secure the following matters as part of the site plan application, to the satisfaction of the City:

- a. the materiality and articulation of the proposed building, including the material selection and window proportion, to ensure consistency with the Forest Hill Urban Design Guidelines and an appropriate relationship to the building to the north at 404 Spadina Road;
- b. the materiality of all railings;
- c. the cladding of the mechanical penthouse;
- d. a landscape plan showing appropriate street furniture along Montclair Avenue and treatment of the corner at Montclair and Spadina Road; and,
- e. an evaluation of the potential curb bump out at the corner of Montclair Avenue and Spadina Road.

As part of presenting any settlement to the Ontario Municipal Board, our client agrees to request that the Ontario Municipal Board withhold any final order pending written confirmation from the City Solicitor that the zoning by-law amendment(s) are in a final form satisfactory to the City.

Please also note the agreement of our client, as part of a comprehensive settlement with all parties (including the City), to pay for a gate to separate the public lane from the parking area of the adjacent property known municipally as 60 Montclair Avenue and owned by Montclair Co-ownership Inc.

Our client is hopeful that this without prejudice proposal will be accepted by City Council. As noted above, however, if City Council does not accept this settlement offer at its meeting commencing on March 26, 2018, this settlement offer should be considered as withdrawn.

Please let us know if any additional information is required.

Yours truly,

**Goodmans LLP**



David Bronskill  
DJB/  
6799105