

19 Western Battery Road - Committee of Adjustment Application - Agreement for Child Care Facility - Request for Authorization Report

Date: April 23, 2018

To: Toronto and East York Community Council

From: Director, Real Estate Services

Acting Director, Community Planning, Toronto and East York District

Wards: Ward 19, Trinity-Spadina

SUMMARY

The owner of 19 Western Battery Road, Liberty Residences Inc., submitted Minor Variance Application A1066/17TEY to the Toronto Committee of Adjustment in connection with a 28 storey residential building currently under construction pursuant to site specific zoning. Among other matters, the variances requested were to increase the maximum permitted height by three storeys, reduce parking requirements and permit a child care use. An increase in podium height and other technical amendments that would allow the integration of child care space were also requested. City Planning had no objection to the application following consultation with Children's Services Division, Real Estate Services Division as well as Parks, Forestry and Recreation, and a report with recommendations was submitted to the Committee by the Acting Director, Community Planning, Toronto and East York District.

The application was approved subject to the provision of a minimum of 464.5 square meters of child care space and its conveyance to the City of Toronto in accordance with a Term Sheet, dated March 22, 2018 (Attachment 1) (the "Term Sheet"). The owner's obligations set out in the Term Sheet include design and construction of finished child care space, conveyance in the form of a condominium unit and the design of outdoor play space which the City will construct in an adjacent future park (the park is secured in existing subdivision agreements). The City will be responsible to select a licensed operator of the child care space. The Committee condition required that the owner's obligations be secured in an agreement with the City pursuant to Section 45(9.1) of the Planning Act and registered on title. This report recommends and seeks the authority of City Council for execution of the Section 45(9.1) Agreement and other necessary documents for the conveyance of the child care space, on terms generally set out in the Term Sheet and other terms as may be acceptable.

RECOMMENDATIONS

The Director, Real Estate Services and the Acting Director, Community Planning, Toronto and East York District recommend that:

1. City Council authorize entering into an agreement pursuant to Section 45(9.1) of the Planning Act as contemplated by the Committee of Adjustment in its Decision relating to Application A1066/17TEY, which agreement is in a form acceptable to the City Solicitor and which secures, among other matters, the conveyance by the owner of a minimum of 464.5 square meters of finished child care space to the City of Toronto at 19 Western Battery Road for nominal consideration and substantially on such terms as are set out in the Term Sheet, dated March 22, 2018, and included at Attachment 1 of the joint Report of the Director, Real Estate Services, and the Acting Director, Community Planning, Toronto and East York District, dated April 17, 2018, with any such revisions thereto, and any other terms as are deemed necessary and acceptable to the Chief Planner and Executive Director, City Planning and the Deputy City Manager, Internal Corporate Services, the General Manager Children's Services and the General Manager, Parks, Forestry and Recreation, or their respective designates, as applicable.
2. City Council authorize the City to enter into such agreements and arrangements as may be required to facilitate the transaction contemplated in Recommendation 1, including, without limitation, agreements and arrangements relating to purchase and sale, shared facilities, cost sharing, options, easements, licenses and leases, design, construction and limiting distance areas as may be determined to be required and satisfactory to the Deputy City Manager, Internal Corporate Services or designate.
3. City Council authorize the City Solicitor to proceed with all actions necessary to complete the transaction contemplated in Recommendation 1 for the acquisition of child care space by the City of Toronto, including paying any necessary expenses, and making arrangements for closing, due diligence and waivers and notices on such terms deemed appropriate.
4. City Council authorize the Chief Planner and Executive Director, City Planning to execute the Section 45(9.1) Agreement, referred to in Recommendation 1 and that the Deputy City Manager, Internal Corporate Services or designate be authorized to execute all other documents relating to the real estate transaction as referred to in Recommendation 2.
5. City Council authorize such other City Officials and City staff to take such action as may be necessary to implement the foregoing, including implementing the terms of the Section 45(9.1) Agreement.

FINANCIAL IMPACT

Design and Construction Costs

Pursuant to the Term Sheet, dated March 22, 2018, at Attachment 1 the child care space required is to be conveyed for nominal consideration with completion to a shell condition (Term Sheet - Schedule B) together with fit out in accordance with approved plans and specifications (Term Sheet - Schedule C) at the cost and expense of the owner. Accordingly, there are no expected costs associated with the construction and conveyance. However, if the City is not in compliance with its obligations to instruct the owner in the design of the facility, then the owner has the option of providing the City the child care space in base building condition together with payment of \$450,000.00 for which the City would design and fit up the child care space. The City would then be required to budget any necessary additional funds and to complete the fit out at its own expense after the space is conveyed. Design is in progress so there are no cost details available at this time. Both the owner and Children's Services staff have committed to working to achieve the proposed design schedule and, as such, this alternative is unlikely to be triggered. Should additional costs be incurred by the City to fit out the child care centre, Children's Services will include these costs in its 2019 or future years' Capital Budget Submissions.

Condominium Unit

The Term Sheet contemplates conveyance of a condominium unit to the City for the child care space and that the unit will be assigned a nominal amount of common expenses and fees in so far as the unit continue to be used by the City. Typically, as with any condominium, it is possible such costs could be increased in the future or a special assessment made for repair of the common elements. There is no way to evaluate that possibility at this time. However, should such an increase or assessment occur, it would be necessary for Children's Services Division to include it in their capital budget or pass such costs to the child care operator.

The Term Sheet contemplates that if, for any reason, the project is not registered as a condominium the City would acquire title to the child care space as a freehold stratified parcel. In that case, although the City would not be subject to any common expenses or special assessments, it would still be required to enter into a shared facilities arrangements relating to such matters. Again, any costs arising would be included in Children's Services capital budget or passed on to the child care operator.

Licensed Operator

With respect to the costs of operating the child care space, it is contemplated that the City will lease the space to a licensed operator and costs are expected to be recovered.

Cost of Outdoor Play Space

The developer will design the outdoor play space at its cost and expense. However, construction of the outdoor play space in the adjacent future park will be the responsibility of the City. Children's Services has identified that a request for funding will be included in their 2019 or future years' Budget Submissions for the construction of the child care centers outdoor playground area. Once constructed, it is expected that the child care operator will have exclusive use of the outdoor play space during operating hours. This is similar to existing arrangements in other areas of the City such as City Hall.

The Acting Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

Development of 19 Western Battery Road (the "Site") forms part of the multi-phased subdivision and redevelopment of the former Inglis Manufacturing Lands. A context map is included at Attachment 2. The Site is part of Phase I and there are existing Section 37 Agreements and subdivision agreements that secure a variety of matters, including a public park immediately adjacent to the Site. Development is controlled by former City of Toronto By-law 438-86 as amended by By-laws 566-2000; 684-2003; 600-2005; 853-2005 and 1079-2010. The Site is known as Block 1A in By-law 1079-2010 which permits a residential building with a maximum height of 88 metres (28 storeys). The link to the Final 2010 Report relating to enactment of By-law 1079-2010 is as follows: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.TE34.5>

The Committee of Adjustment, Toronto and East York District approved Minor Variance Application A1066/16TEY respecting the Site at its meeting March 28, 2018, and, among other matters, approved an increase in height, parking reduction and permitted a child care use subject to conditions.

COMMENTS

The 19 Western Battery Road property is located in the Liberty Village Neighbourhood which is comprised of a wide range of residential, commercial, office and retail uses. City Planning assessed Minor Variance Application A1066/17TEY in consultation with Children's Services, Real Estate Services as well as Parks, Forestry and Recreation, and concluded that child care space at this location was a valuable community benefit to an expanding neighbourhood and that, in the circumstances, it had no objection to the variances.

A report from the Acting Director, Community Planning, Toronto and East York District, dated March 23, 2018, was submitted to the Committee of Adjustment, which included a recommendation that, should the Committee approve the minor variance application, a condition should be imposed requiring that a minimum area of 464.5 square meters be provided for child care uses and conveyed to the City of Toronto for nominal consideration generally in accordance with an appended Term Sheet, dated March 22, 2018 (also included as Attachment 1 to this Report). The Committee accepted the recommendations of the Acting Director, including requiring that the obligations be secured in an agreement pursuant to Section 45(9.1) of the Planning Act to the satisfaction of the Chief Planner and Executive Director, City Planning.

The primary elements of the owner's obligations relating to child care space as outlined in the Term Sheet and that are to be undertaken at its own cost and expense to the satisfaction of identified City representatives, include:

- design, construct and finish 464.5 square meters to shell condition;
- design, construct and equip child care space in a licensable condition;
- second floor location with ground floor access;
- convey the space for nominal consideration as a condominium unit;
- register a Section 118 restriction on the lands to secure the conveyance;
- convey in completed condition within 180 days of registration of the condo;
- required rights of access, easements and common elements to be included;
- design outdoor playground in the future park immediately north of the site; and
- certify completion and provide a performance guarantee for all work undertaken.

In addition, the Term Sheet establishes a 2018 Design Process which outlines a design phase schedule. It recognizes that, in order to maintain the construction schedule and construction cost efficiencies for completion of the child care space (given the current state of building construction), the owner requires design completion within the next 3-4 months. City staff consider these design targets to be achievable and are willing to work toward the schedule identified. If the design schedule is not achieved there could be financial impacts to the City, which are outlined in this report's Financial Impact section.

The Term Sheet also contemplates that, although the owner is required to design the outdoor space, there is no obligation to construct or provide the outdoor space for the child care on the Site. Pursuant the existing subdivision agreement registered on the lands, a park will be conveyed to the City immediately adjacent to the north boundary of the Site. Similar to other arrangements in the City, Parks, Forestry and Recreation have no objection to the proposed play space being developed to accommodate the child care requirements. This will be an internal arrangement with Children's Services. In addition, Parks, Forestry and Recreation have acknowledged that the close proximity to the rail corridor limits the City's ability to build on the adjacent future park block and, as such, as part of the overall terms for the child care space, are willing to accept the lands subject to limiting distance arrangements relating to any area of approximately 160 square meters within the future park (Term Sheet - Schedule E).

In conclusion, this report's recommendations are intended to facilitate implementation of the Term Sheet to satisfy the conditions of the Committee of Adjustment. This report was prepared with input from Children's Services and Parks, Forestry and Recreation. Pursuant to By-law 590-2009, the Chief Planner and Executive Director, City Planning, has been delegated the authority to execute agreements imposed as conditions by the Committee of Adjustment, but this authority does extend to situations where there is a potential expenditure of unbudgeted funds as set out in the report's Financial Impact section. Authority for execution of the proposed Section 45(9.1) Agreement by the Chief Planner and Executive Director, City Planning, is requested along with authority for the Deputy City Manager, Internal Corporate Services to execute and take necessary action in connection with implementing the contemplated real estate transaction.

CONTACT

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SIGNATURE

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ATTACHMENTS

Attachment 1 Term Sheet - March 22, 2018
Attachment 2 Location Map