



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

2779, 2781 Yonge Street & 15-17, 19-21 Strathgowan Avenue - Zoning By-law Amendment Application - Request for Further Directions Regarding LPAT Appeal

Date: July 5, 2019

To: City Council

From: City Solicitor

Wards: Ward 15 – Don Valley West

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

Devron (YS) Ltd. (the "Applicant") is the owners of lands municipally known as 2779, 2781 Yonge Street & 15-17, 19-21 Strathgowan Avenue (the "Subject Site"). The Subject Site is located at the south-east corner of Yonge Street and Strathgowan Avenue.

On February 21, 2013, the former owner of the property, 1655584 Ontario Limited, submitted a Zoning By-law Amendment application to the City to permit the development of a 9-storey residential building with ground floor commercial uses (the "Application"). On November 28, 2014, the owner appealed the Application to the Ontario Municipal Board ("OMB") (now the Local Planning Appeal Tribunal ("LPAT")) as OMB/LPAT File No. PL141372. On February 3, 2016, City Council adopted a settlement of the OMB appeal of the Application as Item CC.12.12.

A settlement hearing was held on May 12, 2016, and on June 8, 2016 the OMB issued its decision approving the Application (the "OMB Decision"). In the OMB Decision, the OMB withheld its final order until the City Solicitor has confirmed in writing that a Section 37 agreement has been executed and registered on title, that the City has issued notice of approval conditions for the site plan application, and that the zoning by-law amendments are in a final form to the satisfaction of all the parties. To date, the final order of the OMB has not been issued as the conditions have yet to be fulfilled. At some time after the release of the OMB Decision, the Applicant acquired the Subject Site from the previous owner. On May 3, 2019, following discussion with City staff

through the course of the now ongoing site plan approvals process, the Applicant made a resubmission to the City with a revised design for the proposal (the "Revised Design"). This Revised Design includes changes to the proposal and the draft form of the zoning by-law amendments that City Council endorsed as a settlement and that is the subject of the OMB Decision. The Revised Design was made following consultation and with the input of City Staff, neighbours, and the parties to the OMB appeal. The Revised Design is public and is described in more detail in the "Comments" section below.

The purpose of this report is to seek further instructions from City Council.

A related rental housing demolition application has also been submitted in relation to the Application. There are 28 existing rental dwelling units located on the Subject Property that are proposed to be demolished and replaced within the new development. The Revised Design maintains the rental replacement as originally proposed. On June 25, 2019, North York Community Council considered a Final Report regarding the rental housing demolition application for the Subject Property as Item NY7.5, and adopted Staff's recommendations. Community Council has recommended that City Council approve the application for a rental housing demolition permit subject to the replacement of the 28 existing rental dwelling units and certain other conditions. City Council will also consider that report at its meeting on July 16 and 17, 2019. The Final Report regarding the rental housing demolition application should be considered in conjunction with this Solicitor's Report.

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 February 3, 2016, City Council adopted a Request for Directions Report from the City Solicitor approving a settlement of the OMB appeal of the Application. A copy of City Council's decision and the City Solicitor's report can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.CC12.12>

On June 8, 2016 the OMB issued a written decision approving the settlement adopted by City Council above and allowing the Application for a zoning by-law amendment subject to certain conditions of final order. A copy of the OMB Decision can be found at the following link:

<http://www.omb.gov.on.ca/e-decisions/pl141372-Jun-08-2016.pdf>

On June 25, 2019, North York Community Council adopted the recommendations of Final Report from Community Planning regarding the Rental Housing Demolition Application to permit the demolition and replacement of 28 rental dwelling units as part of the proposed development on the Subject Property. City Council will consider this report at its meeting on July 16 and 17, 2019. A copy of Community Council's decision and Community Planning's report can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.NY7.5>

COMMENTS

As was mentioned above, the Applicant has resubmitted to the City a Revised Design for the proposed development. This Revised Design includes changes to the proposal and the draft form of the zoning by-law amendments that City Council endorsed as a settlement and that was approved in the OMB Decision. The Revised Design was made following consultation and with the input of City Staff, neighbours, and the parties to the OMB appeal.

On July 4, 2019, the Applicant's counsel, Goodmans LLP, provided the City Solicitor with a letter requesting that the City seek further instructions from City Council to support the Revised Design and detailing the changes made to the proposal (the "Applicant's Letter"). Appended to the Applicant's Letter are architectural plans by Rafael + Bigauskas Architects dated May 2, 2019, reflecting the Revised Design (the "Architectural Plans"). The Applicant's Letter is included as Public Attachment 1 to this report. The Architectural Plans are included as Public Appendix A to Public Attachment 1 to this report.

The changes to the Revised Design include a reduced south side yard setback along Yonge Street, which brings a portion of the proposed building closer to the southern property line. This change was made to provide a more consistent streetscape along Yonge Street.

The Revised Design has a total gross floor area of 13,041 square metres. The Revised Design also maintains a number of the elements of the settlement adopted by City Council in 2016 and approved in the OMB Decision, including maintaining a building height of 9-storeys (with a maximum height of 29.75 metres to the top of the roof), complying with the angular planes in the original design, maintaining the minimum amount of 189 square metres of indoor and 243 square metres of outdoor amenity space, and including 89 residential units of which are 28 replacement rental dwelling units with associated parking spaces.

The Applicant's Letter notes that all the parties to the OMB Decision, which include the Uptown Yonge Neighbourhood Alliance Inc., the Sherwood Park Residents' Association Inc., and Sheridan Nurseries Ltd. have confirmed to the Applicant's counsel their support for the Revised Design. The Toronto Community Housing Corporation ("TCHC") is the neighbour immediately to the south of the Subject Site. The TCHC has also confirmed to the Applicant's counsel their support for the reduced south side yard setback proposed in the Revised Design and has entered into a memorandum of understanding with the Applicant securing a limiting distance agreement between their properties.

The City Solicitor requires further instructions regarding the Revised Design. This report is about on-going litigation before the OMB/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

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Confidential Attachment 1 - Confidential Recommendations and Confidential Information
2. Public Attachment 1 - Applicant's Letter
3. Public Appendix A to Public Attachment 1 - Architectural Plans (on file with the City Clerk for the purpose of the July 16 and 17, 2019 City Council meeting).