



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### 2433 Dufferin Street - Zoning Amendment Application & Site Plan Control Application - Request for Directions

**Date:** July 8, 2019

**From:** City Solicitor

**Wards:** Ward 8 - Eglinton - Lawrence

#### REASON FOR CONFIDENTIAL INFORMATION

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This report contains information about litigation or potential litigation that affects the City or one of its agencies or corporations. This report contains advice or communications that are subject to solicitor-client privilege.

#### SUMMARY

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Rainberry Estates Inc. (the "Applicant") is the owner of the lands municipally known as 2433 Dufferin Street (the "Subject Site"). The Subject Site is currently vacant and located at the northeast corner of Dufferin Street and Hopewell Avenue. The Applicant originally applied for amendments to the former City of York Zoning By-law No. 1-83 and the City of Toronto Zoning By-law No. 569-2013 to permit the construction of a 5 storey (18.5 metre high) mixed use building with retail/commercial uses at grade (the "Zoning Application"). The Applicant also submitted a related application for Site Plan approval (the "Site Plan Application").

On November 28, 2017, the Applicant appealed the Zoning Application and the Site Plan Application to the Local Planning Appeal Tribunal (the "LPAT") due to City Council's failure to make a decision within the prescribed time periods under the Planning Act. On May 16, 2018, the Applicant submitted a revised proposal for a 9 storey (27 metre high plus mechanicals) mixed use building, to which City Council recommended in July 2018, that the City Solicitor attend the LPAT in opposition and to continue to negotiate with the Applicant. The LPAT hearing has been scheduled to commence on September 3, 2019.

The purpose of this report is to request further instructions for the upcoming LPAT hearing with respect to a without prejudice "public" settlement proposal received from the Applicant on May 28, 2019 following negotiations with Planning staff.

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 recommendations contained in the Confidential Attachment 1.
2. City Council authorize the public release of the confidential recommendations in Confidential Attachment 1 if adopted by City Council.
3. City Council direct that all other information contained in Confidential Attachment 1 remain confidential at the discretion of the City Solicitor, as it contains advice which is subject to solicitor-client privilege.

## **FINANCIAL IMPACT**

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There are no financial implications resulting from the adoption of this report.

## **DECISION HISTORY**

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On August 12, 2014, the North York Community Council adopted the Preliminary Report on the Zoning Application. The report can be found at the following link:

<http://www.toronto.ca/legdocs/mmis/2014/ny/bgrd/backgroundfile-71923.pdf>

On November 28, 2017, the Zoning and Site Plan Applications were appealed to the LPAT. On May 16, 2018, the applicant submitted a revised proposal. At its meeting on July 23, 24, 25, 26, 27 and 30, 2018, City Council adopted the recommendations from the Director of Community Planning, North York District, in City Planning's report dated July 25, 2018 to direct the City Solicitor to attend the LPAT in opposition to the revised application and to direct City Planning to continue negotiations with the Applicant. The report can be found at the following link:

<http://www.toronto.ca/legdocs/mmis/2018/mm/bgrd/backgroundfile-119468.pdf>

On May 28, 2019, the Applicant submitted to the City a without prejudice "public" settlement proposal with revisions to the Application.

## **COMMENTS**

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The City Solicitor received a without prejudice "public" settlement offer on May 28, 2019, which is attached as Public Attachment 1. Revised architectural plans prepared by Romanov Romanov Architects and dated May 27, 2019 are attached as Public Appendix "A". Further direction with respect to this settlement is required.

The key changes made in the Settlement Offer are:

- Overall height of the building has been reduced by 1 storey from 9 to 8 storeys and by approximately 2.8 metres from 29.3 metres to 26.5 metres to the top of the mechanical screen;
- Compliance with the 45 degree angular plane to the Neighbourhoods designation to the north;
- Introduction of a 3 metre building setback from the York Beltline Park to the north and setbacks of 7.20 to 8.06 metres to the east;
- Reduction of Floor Space Index (FSI) from 5.75 to 4.71 times the lot area (gross floor area reduced by approximately 2,138.24 square metres from 11,652.05 square metres to 9,513.81 square metres);
- Reduction in number of units from 113 to 99;
- Vehicular parking reduced from 115 spaces in three levels underground to 80 spaces in two levels underground;
- On the north side, stepbacks of 2.5 metres and 6 metres at the 9th floor changed to 2.5 metres and 3 metres at the 8th floor;
- On the north and south sides, projected balconies changed to inset balconies.
- On the south side, 0 metre setback of patios, balconies, and loggias increased to 0.5 metre;
- On the south, 1 metre stepback at the 7th floor changed to the 6th floor, and 3.5 metre stepback on the 9th floor changed to the 8th floor;
- On the west side, 3 metre stepback on the 9th floor changed to the 8th floor, and 1 metre stepback on the 7th floor changed to the 6th floor; and
- On the east side, 1 metre stepback on the 9th floor changed to the 8th floor.

The table below provides a summary comparison of the original proposal of June 2014, the revised proposal of May 2018 and the without prejudice "public" settlement offer of May 2019.

<b>Site Statistics</b>	<b>June 2014 Original Submission</b>	<b>May 16, 2018 Submission</b>	<b>May 28, 2019 Without Prejudice Submission</b>
Site Area	Before road widening: 2,019.32 square metres Post road widening: 1,925.65 square metres		
Gross Floor Area (square metres)	4,735.84 (including 197.29 retail)	11,601.16 (including 164.07 retail)	9,513.81 (including 167.13 retail)
Floor Space Index (gross)	2.35 (gross)	5.75 (gross)	4.71(gross)

<b>Site Statistics</b>	<b>June 2014 Original Submission</b>	<b>May 16, 2018 Submission</b>	<b>May 28, 2019 Without Prejudice Submission</b>
Height	5 storeys 18.5 metres overall	9 storeys 27 metres plus 2.3 metres of mechanical	8 storeys 25 metres to top of 8th floor, and 26.5 metres to top of mechanical screen
Parking	52	115	80
Bicycle Parking	38	142	126
Setbacks	North – 0.44 metres East – 6.71 metres South – 0.03 metres West – 0.90 metres	North – 0 to 2.5 metres East – 7.2 metres to 8.4 metres South – 1.5 metres West – 0 to 1.5 metres	North – 3.0 metres East – 7.2 metres to 8.06 metres South – 1.5 metres for building face and 0.5 metres for loggias and balconies at the ground, 1st, and 2nd floors West – 0.5 metres to 1.5 metres
Units	One Bedroom – 26 Two Bedroom – 24 Total - 50	Studio – 6 One Bedroom – 16 One Bedroom plus den - 57 Two Bedroom – 23 Two Bedroom plus den - 11 Total - 113	Bachelor – 12 One Bedroom – 56 Two Bedroom – 21 Three Bedroom – 10 Total – 99

## **CONCLUSION**

The City Solicitor requires further instructions. This report is about litigation before the 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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Jason Davidson, Solicitor, Planning & Administrative Tribunal Law, Tel: (416) 392-4835, Email: Jason.Davidson@toronto.ca.

## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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1. Public Attachment 1 - Without Prejudice "public" Settlement Offer dated May 28, 2019
2. Public Appendix "A" to Public Attachment 1 - Revised Plans dated May 27, 2019 (on file with the City Clerk for the purposes of the July 16 and 17, 2019 Council meeting)
3. Confidential Attachment 1 - Confidential Information