



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

859 The Queensway – Zoning By-law Amendment Application – Request for Direction Regarding LPAT Hearing

Date: November 14, 2019

To: City Council

From: City Solicitor

Wards: Ward 3 - Etobicoke-Lakeshore

REASON FOR CONFIDENTIAL INFORMATION

This report is 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

Latch Developments Ltd. (the "Applicant") is the owner of the property municipally known as 859 The Queensway (the "Subject Property"). The Applicant applied for a zoning by-law amendment in order to facilitate a proposed mixed-use redevelopment of the Subject Property (the "Original Application"). The Application proposes a 14-storey mixed use building.

On January 24, 2018, the Applicant appealed the zoning by-law amendment application to the Ontario Municipal Board (the "OMB") now known as the Local Planning Appeal Tribunal (the "LPAT") due to City Council's failure to make a decision. The first Prehearing Conference for this matter was held on October 4, 2018.

On November 30, 2018, the Applicant submitted a related Site Plan Approval application with revised plans for a 14-storey mixed-use building that modified certain elements of the original proposal.

On August 19, 2019, the Applicant, through their legal counsel Goodmans LLP, confirmed in a with prejudice settlement offer letter to the City that the applicant would

be pursuing a slightly revised design for the proposed development (the "Revised Plans"). The Revised Plans still propose a 14-storey building, however, incorporated certain changes to the design of the development. The Applicant's settlement offer letter confirmed that the Applicant would be seeking approval of the Revised Plans at the LPAT hearing. After considering the offer, City Council ultimately refused the proposed settlement at its meeting of October 2 and 3, 2019. Notwithstanding, the Applicant continues to seek approval of the Revised Plans through its LPAT appeal.

A four day Hearing was scheduled to be heard by the LPAT on November 5 to 8, 2019. This Hearing was adjourned on consent of the parties to permit the City to seek further instructions regarding the appeal from City Council. The next LPAT appearance regarding this appeal is now scheduled for January 15, 2020.

The purpose of this report is to request instructions for the upcoming LPAT Prehearing Hearing.

City Planning staff have 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 and Confidential Attachment 2 to remain confidential at the discretion of the City Solicitor, as it contains advice 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

In 2002, the City undertook an Avenues Study for The Queensway between Kipling Avenue and Mimico Creek (The Queensway Avenue Study). The Subject Property falls within the study area. The purpose of the study was to identify a vision and develop implementation strategies to revitalize The Queensway as an *Avenue* consistent with the objective of the Official Plan to re-urbanize corridors along major streets in the City.

Generally, the Avenues Zoning By-law permits a mix of uses at a maximum density of 3.0 times the lot area and building heights of 6 and 8 storeys. In June 2003, City Council enacted The Queensway Avenues By-law (By-law No. 514-2003) to implement The Queensway Avenue Study. A copy of By-law No. 514-2003 can be found at the following link:

<https://www.toronto.ca/legdocs/bylaws/2003/law0514.pdf>

On November 14, 2017, Etobicoke York Community Council considered Item EY26.12 pertaining to a Preliminary Report from the Director, Community Planning, Etobicoke York District dated October 23, 2017 regarding the proposed 14-storey mixed use development (the "Preliminary Report"). For more information, see the Preliminary Report at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EY26.12>

On February 26, 2019, City Council considered Item CC3.2 pertaining to a Request for Direction Report from the City Solicitor dated February 15, 2019 regarding a without prejudice settlement offer from the Applicant. City Council's decision refusing that without prejudice settlement offer and providing instructions to the City Solicitor and City staff to attend the LPAT to oppose the appeal can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC3.2>

On October 2, 2019, City Council considered Item CC10.5 pertaining to a Request for Directions Report from the City Solicitor dated September 24, 2019 regarding a with prejudice settlement offer from the Applicant proposing a settlement of the LPAT appeal based on the Revised Plans. City Council's decision refusing the with prejudice settlement offer and providing instructions to the City Solicitor and City staff at attend the LPAT to oppose the Revised Plans and the appeal can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC10.5>

COMMENTS

As was mentioned above, the Subject Property is located within The Queensway Avenue Study area, which permits the development of mid-rise buildings with heights of 6 to 8 storeys and allows a maximum density of 3.0 times the lot area.

The Original Application was for a 14-storey mixed use building with an 8-storey base (48.3 metres in height, excluding the mechanical penthouse). The building contains 228 residential units and 1,149 square metres of at-grade non-residential floor area. The building is proposed to have an FSI of 5.2 times the area of the lot. The Original Application also proposed a total of 253 vehicular parking spaces, which includes 217 residential space in two levels of below-grade garage and 36 visitor/retail spaces at-grade at the rear of the site.

The Revised Plans, currently before the LPAT, still propose a 14-storey mixed use building with an 8-storey base (with a slightly decreased height of 46.7 metres, excluding the mechanical penthouse). The building is setback 1.867 metres from The Queensway and 2.31 metres from Plastics Avenue. The building steps back above the 8th storey and the 13th storey. The building contains an increased 237 residential units and 1,163 square metres of non-residential floor area. The building is now proposed to have an FSI of 5.26 times the area of the lot. The total number of parking spaces has been decreased to 249 vehicular parking spaces. The parking proposed is at a ratio of 0.89 spaces per residential unit (210 spaces) and 0.16 spaces per unit shared as visitor and retail parking (39 spaces). A walkway at the rear of the property has been increased to a total width of 2.1 metres.

City Solicitor Comments

The City Solicitor requires instructions regarding the LPAT appeal. 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 information 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. Confidential Attachment 2 - Confidential Information