

40-44 Broadway Avenue - Zoning By-law Amendment Application - Request for Directions Report

Date: March 3, 2021

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

On May 8, 2020, the applicant (Collecdev Inc.) appealed its Zoning By-law Amendment application to the Local Planning Appeal Tribunal (LPAT). The appeal was made without revisions to the original proposal and citing Council's failure to make a decision on the application within the timeframe prescribed by the Planning Act.

On January 4, 2021, the applicant submitted drawings in support of a further revised proposal on a with prejudice basis. Those drawings were further revised and resubmitted on or around February 12, 2021 on a with prejudice basis as a part of a formal submission to the City (the "Resubmission"). The architectural drawings for the Resubmission are attached as Public Attachment 1. The purpose of this report is to request further instructions on the Resubmission for the Local Planning Appeal Tribunal ("LPAT") hearing that is scheduled to commence on May 31, 2021.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to the report (March 3, 2021) from the City Solicitor.

2. City Council authorize the public release of the confidential recommendations contained in the Confidential Attachment 1 to the report (March 3, 2021) from the City Solicitor, if adopted by City Council.

3. City Council direct that all other information contained in Confidential Attachment 1 and Confidential Attachment 2 to the report (March 3, 2021) from the City Solicitor 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

During its meeting of October 27, 28, and 30, 2020, City Council adopted, without amendment, the recommendations of the Request for Directions Report (September 16, 2020) from the Acting Director, Community Planning, North York District directing direct the City Solicitor and appropriate City Staff to attend the Local Planning Appeal Tribunal (LPAT) to oppose the Zoning By-law Amendment application for 40 and 44 Broadway Avenue in its current form:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.NY18.5>

COMMENTS

On May 8, 2020, the applications were appealed to the Local Planning Appeal Tribunal ("LPAT") pursuant to subsection 34(11) of the Planning Act.

On October 26, 2020, the LPAT conducted a Case Management Conference at which time the appellant requested a hearing in the late Spring of 2021. The LPAT scheduled a 15-day hearing to commence on May 31, 2021.

During that Case Management Conference, the City Solicitor informed the LPAT and parties that it had not yet secured instructions in respect of the matter and that those instructions would be provided by City Council the day after the Case Management Conference but, in any event, the application did not show an on-site parkland dedication as required under the Planning Act. On account of this, the City Solicitor took the position that the built form of the proposal would likely have to change given an on-site parkland dedication was required.

The LPAT directed the applicant to file a complete revised submission with the City before January 4, 2021. The City Solicitor indicated to the applicant that a failure to do so may result in the City bringing a motion to adjourn the May 31, 2021 hearing on the basis that it was premature.

On January 4, 2021, the applicant submitted drawings in support of a revised proposal on a with prejudice basis. A formal resubmission together with additional supporting documents and studies was filed on a with prejudice basis on or around February 12, 2021. The revised proposal continues to be for a 44-storey (131.9 metre) high residential building with a 4-storey base residential element that would be 14.96 metres in height at the north end of the site. The proposed place of worship forms part of the base building element abutting Broadway Avenue and would be 16.86 metres in height. The revised proposal now incorporates a 396 square metre parkland dedication fronting Broadway Avenue.

The application proposes 394 residential dwelling units and a gross floor area of approximately 31,798 square metres, including 2,583 square metres of non-residential gross floor area for the proposed place of worship with a density (floor space index) of 7.5 times the area of the lot. The application proposes a total of 792 square metres of indoor amenity space and 788 square metres of outdoor amenity space.

A total of 140 vehicular parking spaces are proposed in a 2-storey underground parking garage. A total of 488 bicycle parking spaces are proposed, of which 430 would be for resident use and 58 would be for short-term visitors use. One Type 'G' loading space is proposed as part of the development.

The table below outlines the changes between the submission made on July 24, 2019 the Revised Proposal dated January 4, 2021 and the Resubmission dated February 12, 2021.

Category	July 24, 2019 Submission	January 4, 2021 Revised Proposal	February 12, 2021 Resubmission
Site Area	4,262 square metres	3,866 square metres	3,866 square metres
Gross Floor Area (GFA)			
Residential	29,319 square metres	29,216 square metres	29,216 square metres
Non-Residential	2,546 square metres	2,583 square metres	2,583 square metres
Total	31,865 square metres	31,798 square metres	31,798 square metres
Floor Space Index (FSI)	7.5 times the lot area	7.5 times the lot area	7.5 times the lot area
Base Residential Building Height	14.86 metres	14.86 metres	16.85 metres

Category	July 24, 2019 Submission	January 4, 2021 Revised Proposal	February 12, 2021 Resubmission
Place of Worship Height in Building Base	16.85 metres	16.85 metres	16.85 metres
Tower Height	131.91 metres (top of 44th storey) 138.51 m (including MPH)	131.91 metres (top of 44th storey) 138.51 m (including MPH)	131.91 metres (top of 44th storey) 138.51 m (including MPH)
Tower Floor Plate	750 square metres	750 square metres	750 square metres
Tower Setbacks from Property Lines			
North	12.5 metres	12.5 metres	12.5 metres
South	42 metres	42 metres	42 metres
East	12.5 metres	12.5 metres	12.5 metres
West	12.5 metres	12.5 metres	12.5 metres
Tower Setbacks from Adjacent Buildings			
North (55 Erskine)	34 metres	34 metres	34 metres
South (25 Broadway)	60 metres	60 metres	60 metres
East (55 Erskine)	17 metres	17 metres	17 metres
West (28 Broadway)	13 metres	13 metres	13 metres
Residential Units			
Studio	0 (0 percent)	0 (0 percent)	0 (0 percent)
1 Bedroom	170 (42.7 percent)	166 (42.1 percent)	166 (42.1 percent)
2 Bedroom	187 (47 percent)	187 (47.5 percent)	187 (47.5 percent)
3 Bedroom	41 (10.3 percent)	41 (10.4 percent)	41 (10.4 percent)
Total	398	394	394
Amenity Area			
Indoor	808 square metres	808 square metres	792 square metres
Outdoor	800 square metres	800 square metres	788 square metres
Total	1,608 square metres	1,608 square metres	1,580 square metres

Category	July 24, 2019 Submission	January 4, 2021 Revised Proposal	February 12, 2021 Resubmission
Vehicular Parking			
Visitor and Non-Res	60 spaces	60 spaces	60 spaces
Residential	117 spaces	84 spaces	80 spaces
Total	177 spaces	144 spaces	140 spaces
Bicycle Parking (long-term:short-term)	488 spaces (430:58)	488 spaces (430:58)	490 spaces (432:58)
Proposed Parkland Dedication	None	396 square metres	396 square metres

Below is a summary of the primary changes made from the initial application submission on July 24, 2019, to the proposal in the February 12, 2021 resubmission include the following:

- The addition of a 396 square metre public parkland dedication, fronting Broadway Avenue, with an approximate depth of 12.4 metres and an approximate width of 32 metres along Broadway Avenue. The proposed park would include an at-grade setback of 2.6 metres from the front wall of the proposed place of worship;
- A reduction of the driveway width on the west side of the site from 7.5 metres to 6 metres;
- A reduction in the number of residential units from 398 to 394 units, with the removal of 4, one-bedroom units;
- A reduction in the number of parking spaces from 177 spaces to 140 spaces to accommodate the public parkland dedication; and
- An increase in bicycle parking spaces from 488 spaces to 490 spaces.

The resubmission does not contemplate any substantive changes to the site organization or built form.

Site Organization

The proposal continues to consist of two parts: the 44-storey residential building, located towards the rear of the site and the 16.86 metre high place of worship, located along the Broadway Avenue frontage. Vehicular access to the site is now proposed via a single 6 metre wide driveway, which has been reduced from the 7.6 metre wide driveway previously proposed.

The paved promenade that was formerly within the 7.5 metre front yard setback has been removed and replaced with the 396 square metre public parkland dedication fronting Broadway Avenue. The resubmitted architectural drawings also illustrate the south façade of the proposed place of worship building fronting onto the on-site parkland dedication. The addition of the parkland dedication has shifted the place of worship northward and it is now setback 15 metres from the front property line. A 2.6 metre setback is proposed between the northern boundary of the proposed park and the proposed place of worship.

A minimum setback of 5 metres from the park to the building face is required in order to ensure that any maintenance for the development does not interfere with the utility of the park space and provides sufficient space for maintenance of the replacement church building to occur entirely on private property without the need to close or limit public access to portions of the proposed public park.

The primary entrance to the residential building continues to be located at the rear of the site and is accessed via a private north-south walkway that runs parallel along the driveway. Within this area, there are also fire exit doors and an entrance to the loading area. Underground vehicular parking continues to be accessed at the rear of the site.

Built Form

The proposed tall building development continues to be massed in a tower with base building form and the height has not changed from the 2019 Submission. The proposed building is a 44-storey (131.9 metre) residential building with a 4-storey base residential element that would be 14.96 metres in height at the north end of the site. The proposed place of worship forms part of the base building element abutting Broadway Avenue and would be 16.86 metres in height, but would function separately from the residential tower and associated base building.

Servicing

The applicant has submitted a revised Functional Servicing and Stormwater Management Report dated February 9, 2021 by Cole Engineering Group Ltd. Engineering and Construction Services staff are currently reviewing the submitted materials. The revised Functional Servicing and Stormwater Management Reports have been submitted in response to Engineering and Construction Services' memorandum dated September 11, 2019 and are required to determine the storm water runoff, sanitary flow and water supply demand resulting from the proposed development, and whether there is adequate capacity in the existing municipal infrastructure to accommodate the proposed development.

Traffic Impact and Parking

An updated Transportation Considerations Report, prepared by BA Group and dated February 2021 has been submitted in response to Engineering and Construction Services' memorandum dated September 11, 2019. As noted previously, the number of parking spaces has been reduced from 177 spaces to 140 spaces. Vehicular parking is proposed to be provided within a 2-level underground parking garage with 80 spaces for

residents and 60 spaces for non-residents, of which 55 spaces are to be provided on a shared use basis for the church and residential visitors, and 5 spaces are to be allocated for use by parish staff and clergy.

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. Confidential Attachment 1 to this report contains confidential advice and it, together with Confidential Attachment 2, should be considered by Council in camera.

CONTACT

Mark Piel, Solicitor, Planning & Administrative Tribunal Law; Tel: (416) 392-2124; Fax: (416) 397-5624; Email: Mark.Piel@toronto.ca

Roman Ivanov, Solicitor, Planning & Administrative Tribunal Law; Tel: (416) <>; Fax: (416) 397-5624; Email: Roman.Ivanov@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Public Attachment 1 - Architectural Plans prepared by KPMB Architects, dated February 8, 2021 for the property municipally known as 40-44 Broadway Avenue on file with the City Clerk for the purposes of the City Council meeting on March 10, 2021.

Confidential Attachment 1 - Confidential Information

Confidential Attachment 2 - Confidential Information