



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### 933 - 935 The Queensway - Zoning By-law Amendment Application - Request for Directions Report

**Date:** December 7, 2021

**To:** City Council

**From:** City Solicitor

**Wards:** Ward 3 - Etobicoke-Lakeshore

#### 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

---

The purpose of this report is to request further instructions for the potential Ontario Land Tribunal ("OLT") hearing into this matter currently scheduled to commence on March 7, 2022, for two weeks. The applicant appealed the proposed zoning by-law amendment for 933-935 The Queensway to the OLT due to Council's failure to make a decision on the application within the time prescribed by the Planning Act. By letter dated December 7, 2021, attached to this report as Public Attachment "1", and revised plans dated November 22, 2021, attached to this report as Public Attachment "2", counsel for the applicant made a with prejudice settlement offer to the City (the "**Settlement Offer**") proposing a revised development on the site (the "**Revised Proposal**").

#### RECOMMENDATIONS

---

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to the Report (December 7, 2021) from the City Solicitor.
2. City Council authorize the public release of the confidential recommendations in Confidential Attachment 1 to the Report (December 7, 2021) from the City Solicitor at the discretion of the City Solicitor, if adopted by City Council.
3. City Council direct that all other information contained in Confidential Attachment 1 to the Report (December 7, 2021) from the City Solicitor is to remain confidential at the

discretion of the City Solicitor, as it contains advice and information, which is subject to solicitor-client privilege.

## **FINANCIAL IMPACT**

---

There is no financial impact arising from the adoption of the Confidential Recommendations beyond what has already been approved in the current year's budget.

## **DECISION HISTORY**

---

A Preliminary Report was considered by Etobicoke York Community Council on September 16, 2019. The Preliminary Report outlined that Planning staff did not support the proposal as staff were of the opinion that it was not consistent with the Provincial Policy Statement and does not conform to A Place to Grow: Growth Plan for the Greater Golden Horseshoe nor the Official Plan. However, the Preliminary Report also noted staff's desire to continue working with the applicant to achieve a redevelopment proposal that is more in keeping with both provincial and municipal policies. The Preliminary Report is available here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EY8.4>

A community consultation meeting was held on October 23, 2019. Planning staff met with the applicant to discuss concerns regarding the proposal prior to the community consultation meeting as well as after the community consultation meeting. At both meetings, the applicant expressed a desire to work with staff on a revised proposal.

On August 4, 2020, the applicant appealed the application to the Local Planning Appeal Tribunal, citing City Council's failure to make a decision on the application within the time period prescribed by the Planning Act.

A Request for Directions Report (dated December 10, 2020) from the Director, Community Planning, Etobicoke-York District was considered by City Council at its meeting of February 2, 3 and 5, 2021. City Council directed the City Solicitor and Planning staff to attend at the OLT and oppose the Zoning By-law Amendment Application. The report can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.EY21.3>

The Tribunal has held two case management conferences on November 4, 2020 and on March 8, 2021. A 10-day hearing is scheduled to commence on March 7, 2022.

## COMMENTS

---

On December 7, 2021 counsel for the owner submitted a Settlement Offer which included revised plans dated November 22, 2021.

### The Revised Proposal

The application has been substantially reduced in development scale from a 17-storey mixed-use building to an 11-storey storey mixed-use building (including a mezzanine) with 191 residential dwelling units and a total gross floor area of 16,832 square metres. The development would have a 7-storey (including mezzanine) base, commercial/retail at grade, and a 6-storey (including mezzanine) southeastern wing of the building containing 2-storey grade related units on Queen Elizabeth Avenue with units above. There would be a total of 817 square metres amenity space provided, comprised of 398 square metres of indoor amenity space and 419 square metres of outdoor amenity space, which exceeds the required 2 square metres per unit of indoor and outdoor amenity space.

#### Summary of the Revised Plans:

- The building height has been reduced to an 11-storey mixed-use building (inclusive of a mezzanine), 36.33 metres in height to the top of the 11th residential storey.
- The proposed development contains a consistent 7-storey (including mezzanine) streetwall base with setbacks of 5.34 metres for storeys 7-8, with the remaining storeys above setback 12.69 metres away from The Queensway.
- The southeastern wing of the building was reduced from 7-storeys to 5-storeys (6-storeys including the mezzanine at 19.28 metres in height);
- The building massing is setback from The Queensway (north side) by 3 metres for 1st storey and the mezzanine and then setback 1.16 to 1.86 metres for storeys 2-6;
- The Revised Proposal includes a 7-storey streetwall with north side setbacks of 5.34 metres for storeys 7-8, with the taller portion of the remaining storeys above setback 12.69 metres away from The Queensway;
- The building massing is setback from the Canmotor Avenue (east side) property line is increased from 3 metres for the first storey and the mezzanine to 4.20 metre. The setback for storeys 2 to 5 would be 3.04 metres;
- The height reduction of the southeastern wing of the building as well as the setback of 3 metres from the southern property line of the abutting lot at 929 The Queensway (also designated *Mixed Use Areas*); and
- In addition, beyond the continuous streetwall along The Queensway, storeys 1-10 and the mechanical penthouse would be setback 5.5 metres from the western property line of 929 The Queensway.

Moreover, the Revised Proposal does not penetrate a 45 degree angular plane on The Queensway or Canmotor Avenue (with only a slight protrusion of the 6th floor roof on Canmotor Avenue). Protrusion into the 45 angular plane on Queen Elizabeth Boulevard was significantly reduced from 12-storeys to 6-storeys in the Revised Proposal.

The applicant has also agreed to make a Section 37 contribution for \$1,200,00.00. Below is a chart summarizing the key modifications of the Revised Proposal compared to the original proposal outlined in the Request for Direction Report by Planning staff dated December 10, 2020.

<b>Proposal Element</b>	<b>Original Proposal (December 10, 2020)</b>	<b>Revised Proposal (Nov. 22, 2021)</b>
<b>Building Height</b>	17-storeys (inclusive of a mezzanine level)  (53.43 metre total building height, excluding the mechanical penthouse)	11-storeys (inclusive of a mezzanine level)  (36.33 metre total building height, excluding the mechanical penthouse)
<b>Southeastern wing of building extending to Canmotor Avenue</b>	7-storeys (inclusive of a mezzanine level)	6-storeys (inclusive of a mezzanine level)
<b>Building height along Queen Elizabeth Boulevard</b>	17-storeys (inclusive of a mezzanine level)	11-storeys (or 10 storeys inclusive of a mezzanine level)  Includes a 2.68 metre step back from base building above the 6th level
<b>Gross floor area</b>	18,610 square metres	16,832 square metres
<b>Dwelling units</b>	227	191
<b>Floor Space Index</b>	6.93	6.27
<b>Commercial/Retail/Space</b>	492 square metres	511 square metres
<b>45 Degree Angular Plane Taken at 80 percent of the ROW (The Queensway)</b>	Minor projections of roofs and balconies into the angular plane	No penetration into the angular plane
<b>45 Degree Angular Plane Taken at 80 percent of the ROW (Carmotor Avenue)</b>	Significant projection of the 6th and 7th floors into the angular plane	Adheres to the angular plane with minor projection of the 6th floor roof into the angular plane

<b>Proposal Element</b>	<b>Original Proposal (December 10, 2020)</b>	<b>Revised Proposal (Nov. 22, 2021)</b>
<b>45 Degree Angular Plane Taken at 80 percent of the ROW (Queen Elizabeth Boulevard)</b>	Significant projection of 12 levels and the mechanical penthouse into the angular plane	Projection of 6 levels and the mechanical penthouse into the angular plane
<b>North Side Setback of Building Massing from The Queensway</b>	Levels 7 and 8 = 4.14 - 4.84 metres	Levels 7 and 8 = 5.34 metres
<b>East Side Setback of Building Massing from Canmotor Avenue</b>	Levels 1 to 6 = 3.0 metres	Levels 1 and mezzanine = 4.20 metres  Levels 2 to 5 = 3.04 metres
<b>South Side Setback of Building Massing from Queen Elizabeth Boulevard</b>	Levels 1 to mechanical penthouse and levels 1-6 of southeastern wing = 2.62 metres	Levels 1 and mezzanine = range from 1.0 - 4.57 metres for midrise portion and 3.53 metres for southeastern wing  Levels 2-5 = 0-2.7 metres for midrise portion and 2.63 metres for southeastern wing  Levels 6 to mechanical penthouse = 2.68 metres
<b>West Side Setback of Building Massing</b>	Levels 2 to 6 = 0.36 metres	Levels 2 to 6 = 1.56-1.61 metres
<b>Vehicular Site Access</b>	A one-way vehicular access is proposed via Canmotor Avenue and a two-way vehicular access is proposed from Queen Elizabeth Boulevard	Driveway access from Canmotor Avenue is eliminated. Access is consolidated into one inbound/outbound access via Queen Elizabeth Boulevard

Detailed project information may be found on the City's Application Information Centre at: <http://app.toronto.ca/AIC/index.do?folderRsn=FaDhXd6XNIBjz1AHtkDp8Q%3D%3D>

The City Solicitor requires further instructions on this matter. This report is about litigation before the Ontario Land Tribunal and contains advice or communications that are subject to solicitor-client privilege. Confidential Attachment 1 to this report contains confidential advice and should be considered by City Council in camera.

## **CONTACT**

---

Jessica Braun, Solicitor, Planning & Administrative Tribunal Law Tel: 416-392-7237;  
Email: [Jessica.Braun@toronto.ca](mailto:Jessica.Braun@toronto.ca)

Daniel Elmadany, Solicitor, Planning & Administrative Tribunal Law Tel: 416-397-5709;  
Email: [Daniel.Elmadany@toronto.ca](mailto:Daniel.Elmadany@toronto.ca)

## **SIGNATURE**

---

Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

---

Public Attachment "1" - Letter from Aird and Berlis LLP dated December 7, 2021 regarding 933-935 The Queensway, Etobicoke

Public Attachment "2" - Architectural Plans and Drawings, dated November 22, 2021 prepared by TACT Architecture Inc.

Confidential Attachment 1 - Confidential Information