

2793, 2795-2799 Bathurst Street – Zoning By-law Amendment Application – Request for Further Direction

Date: November 29, 2021

To: City Council

From: City Solicitor

Wards: Ward 8 – Eglinton-Lawrence

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 seek further instruction regarding a development application at 2793, 2795-2799 Bathurst Street.

This report has been prepared in consultation with City Planning.

At its meeting on December 4, 5 and 13, 2018, City Council endorsed a settlement from Aird and Berlis LLP, dated October 1, 2018, on behalf of the owner for a 9 storey mixed-use development with residential and retail uses at 2795-2799 Bathurst Street.

City Council's decision is available at:

[Agenda Item History - 2019.CC1.18 \(toronto.ca\)](#)

A Local Appeal Planning Tribunal hearing was held on January 17, 2019 to consider the proposed settlement (PL170696) for 2795-2799 Bathurst Street. On January 30, 2019, the Tribunal issued a decision allowing the appeal, in part, and approved the proposed Zoning By-law Amendment in principle, but withheld its final order pending satisfaction of certain preconditions.

On November 22, 2021, the City Solicitor received a with prejudice offer of a revised settlement from Aird and Berlis LLP, on behalf of the owner, proposing that the corner site at 2793 Bathurst Street be included to the development at 2795-2799 Bathurst Street. The offer is the result of extensive discussions with City staff. Further detail regarding revisions to the previous settlement offer dated October 1, 2018, is provided below.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in Confidential Attachment 1 to the report (November 29, 2021) from the City Solicitor.
2. City Council authorize the public release of the Confidential Recommendations contained in Confidential Attachment 1 to the report (November 29, 2012) from the City Solicitor, if adopted by City Council, with the balance of the Confidential Attachment 1 to remain confidential at the discretion of the City Solicitor as it contains advice, which is subject to solicitor-client privilege.

FINANCIAL IMPACT

The City Planning Division confirms that there are no financial implications resulting from the recommendations included in this report in the current budget year or in future years.

DECISION HISTORY

On May 7, 2015, an application to amend Zoning By-laws 7625 and 569-2013 for 2795-2799 Bathurst Street was submitted to the City to permit a 10 storey (35 metres) mixed-use building fronting Bathurst Street, with 175 dwelling units, a gross floor area of 14,745 square metres and floor space index of 4.4 times the lot area.

At its meeting on September 8, 2015, North York Community Council adopted a Preliminary Report dated August 19, 2015, and directed City Planning staff to schedule a community consultation meeting with the Ward Councillor. The Preliminary Report is available at:

[Preliminary Report - 2795-2799 & 2801 Bathurst Street \(toronto.ca\)](https://www.toronto.ca/city-government/planning-development/development-reports/2795-2799-2801-bathurst-street-preliminary-report)

A revised proposal was submitted on June 9, 2017 with a reduced height of 9 storeys (31.35 metres), with 150 residential units, a gross floor area of 14,490 square metres and floor space index of 4.11.

The Zoning By-law Amendment application was appealed to the Ontario Land Tribunal (the "OLT") on June 20, 2017 citing City Council's failure to make a decision on the application within the time frame prescribed under the *Planning Act*.

At its meeting on December 5, 6, 7 and 8, 2017, City Council adopted the recommendations in a Request for Direction Report from the Director of Community Planning, North York District, dated November 8, 2017. This report highlighted the need for an Official Plan Amendment ("OPA") for this site, as well as revisions to address issues related to the proposed setbacks, height, massing, density, and transition.

The Request for Direction Report is available at:

[2795-2799 and 2801 Bathurst Street Request for Direction Report](#)

The applicant submitted an OPA application on November 21, 2017 for 2795-2799 Bathurst Street and it was deemed complete on January 9, 2018. The applicant appealed it to the OLT on August 31, 2018, citing Council's failure to make a decision on the application within the time frame prescribed under the *Planning Act*.

On September 4, 2018, City Staff, the applicant and interested parties attended a Tribunal-led mediation session on the appealed applications for 2795-2799 Bathurst Street. On October 1, 2018, the applicant submitted a without prejudice offer that included revised architectural plans and Section 37 public benefits. Staff also worked with the applicant on a draft OPA.

At its meeting on December 4, 5 and 13, 2018, City Council endorsed a settlement from Aird and Berlis LLP, dated October 1, 2018 for 2795-2799 Bathurst Street, on behalf of the owner, for a 9 storey mixed-use development with residential and retail uses at 2795-2799 Bathurst Street.

City Council's consideration of the settlement is available at the following link:

[Agenda Item History - 2019.CC1.18 \(toronto.ca\)](#)

On January 30, 2019, the Tribunal issued a decision (PL170676) on the Zoning By-law Amendment application based on the Council accepted October 1, 2018 Settlement Offer, which included preconditions to be fulfilled prior to the issuance of the final Order.

COMMENTS

This report is about litigation before the OLT and contains advice or communications that are subject to solicitor-client and litigation privilege. Confidential Attachment 1 to this report contains confidential information and should be considered by Council *in camera*. This report has been prepared in consultation with staff from City Planning, including Community Planning and Urban Design Staff, Engineering and Construction Services, and Transportation Services.

On November 22, 2021, the City Solicitor received a with prejudice offer of a revised settlement from Aird Berlis LLP, on behalf of the owner, that proposed that the corner site at 2793 Bathurst Street, which is at the northeastern quadrant of the intersection of Bathurst Street and Glencairn Avenue, be added to the development at 2795-2799 Bathurst Street. The existing single-storey retail use at the corner property (2793 Bathurst Street) is proposed to be included to the development and not demolished, while residential uses will be added above to create a more comprehensive development to the October 2018 Settlement Proposal. The revised settlement offer is attached as Public Appendix A to this report and the revised drawings are attached as Public Appendix B to this report. The proposed revisions are summarized in greater detail in Table 1 below.

- There is no height increase to the proposed building at 9 storeys (30 metres).
- The gross floor area has increased by 1,820 square metres from 13,900 square metres to 15,720 square metres due to the addition of the corner property at 2793 Bathurst Street. The floor space index has increased by 0.45 from 3.93 to 4.38 times the lot area.
- The number of dwelling units has increased by 15 units from 150 units to 165 units with the addition of the residential units above the corner property at 2793 Bathurst Street, while maintaining the percentage of 3-bedroom units at 10 percent.
- Vehicular parking spaces have increased by 14 from 161 to 175, while maintaining the same parking rates, and bicycle parking spaces have increased by 28 from 158 to 186, while maintaining the same bicycle parking rates.
- The indoor amenity space has decreased by 20 square metres from 350 square metres to 330 square metres, which still maintains the minimum indoor amenity space required of 2 square metres per unit in the October 2018 Settlement Proposal. The outdoor amenity space remains the same at 350 square metres, which is above the minimum requirement of 2 square metres per unit in the October 2018 Settlement Proposal.
- The proposal will maintain a 0 metre building setback on Bathurst Street after a 3.44 metre road widening, which stops at the edge of the corner property at 2793 Bathurst Street. Other setbacks would remain the same including 0 metre on the northwestern and southwestern wings of the building, 5.5 metres on the northeastern wing, 3 metres on the southeastern wing, and 3.15 metres on the east (rear) of the building.

This table summarizes the application changes, and compares the previous and current settlement offers:

Site Statistics	Initial Submission (May 7, 2015)	Revised Submission (June 9, 2017)	Settlement Offer Submission (October 1, 2018)	Revised Settlement Offer of November 22, 2021
Building Height (metres)	35	31	30	30
Number of Storeys	10	9	9	9
Gross Floor Area (square metres)	14,745	14,490	13,900	15,720
Floor Space Index	4.4	4.11	3.93	4.38
Unit Count	175	150	150	165
Studio/1br	128 (73 percent)	79 (53 percent)	79 (53 percent)	89 (54 percent)
2B	38 (22 percent)	56 (37 percent)	56(37 percent)	60 (36 percent)
3B	9 (5 percent)	15 (10 percent)	15 (10 percent)	16 (10 percent)
Indoor Amenity (square metres)	350	469	350	330
Outdoor Amenity (square metres)	350	964	350	350
Parking Spaces	182	161	161	175
Bicycle Parking	183	158	158	186

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Confidential Attachment 1 - Confidential Recommendations and Confidential Information
2. Public Appendix A - Settlement Offer dated November 22, 2021 from Aird and Berlis LLP
3. Public Appendix B - Architectural Plans dated June 1, 2021 prepared by IBI Group Architects