



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

95-131 and 155 Balliol Street - Zoning By-law Amendment Application - Ontario Land Tribunal Hearing - Request for Directions

Date: September 30, 2021
To: City Council
From: City Solicitor
Wards: 12 - Toronto-St. Paul's

REASON FOR CONFIDENTIAL INFORMATION

This report contains advice or communications that are subject to solicitor-client privilege. This report contains information regarding potential litigation.

The purpose of this report is to request further instructions for a second Case Management Conference scheduled to commence on October 25, 2021 before the Ontario Land Tribunal (the "**OLT**").

SUMMARY

On June 12, 2020, the City received a Zoning By-law Amendment application for 95-131 and 155 Balliol St. to permit a new 38-storey building (129.6 metres to the top of the mechanical penthouse) consisting of a 4-12 storey base building and a tower above on the site which is currently occupied by an 18-storey rental building and 19 townhouse rental dwelling units. The existing rental building on the site with 267 rental apartment units would be retained.

The applicant appealed City Council's neglect or failure to make a decision on its application for the Zoning By-law Amendment (the "**Appeal**") to the Local Planning Appeal Tribunal (the "**LPAT**"), now the OLT, on October 28, 2020.

The first Case Management Conference took place at the LPAT on March 16, 2021. OLT-led mediation took place between the parties to the appeal on June 7, 11 and 17, 2021.

The second Case Management Conference is scheduled for October 25, 2021.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to the report (September 30, 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 (September 30, 2021) from the City Solicitor, if adopted by City Council.
3. City Council direct that all other information contained in Confidential Attachment 1 to the report (September 30, 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

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

On June 7, 2018, the City received a Zoning By-law Amendment Application to permit a new 25-storey residential apartment building with a daycare facility and a 902 square metre public park on the west side of the subject site. On December 4, 2018, City Council adopted an Interim Direction Report in case the application was appealed to the then LPAT due to a lack of Council decision. The Interim Request for Direction Report can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.CC1.28>

On July 23, 2018, City Council adopted Official Plan Amendment 405 (Midtown in Focus) with modifications and authorized the Chief Planner and Executive Director, City Planning to seek the approval of the Minister of Municipal Affairs of Ontario for Official Plan Amendment 405. The Council decision can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item+2018.PG31.7>

On June 5th, 2019, the Ministry of Municipal Affairs and Housing made a decision on OPA 405, modifying some of the Council adopted Midtown in Focus, including the building height permissions in the Midtown area.

On June 10, 2020, the applicant withdrew its Zoning By-law Amendment Application.

On June 12, 2020, the applicant submitted a new Zoning By-law Amendment Application for 95-131 and 155 Balliol Street for a 38-storey apartment building with a 4-12 storey base building and a tower above, with the intention of retaining the existing 18-storey rental apartment building.

A Preliminary Report on the application was adopted by Toronto and East York Community Council on October 15, 2020 authorizing staff to conduct a community consultation meeting. The Preliminary Report can be found at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.TE19.24>

On October 28, 2020, the applicant appealed City Council's neglect or failure to make a decision on its application to the then LPAT.

The LPAT held the first Case Management Conference on the appeal on March 16, 2021. At that time the Toronto District School Board and G.R. Feldman Investment Ltd. were granted party status. By its Order dated April 1, 2021, the LPAT added the South Eglinton Ratepayers' and Residents' Association ("**SERRA**") as a party to the appeal.

All the parties participated in OLT-led mediation which took place on June 7, 11 and 17, 2021.

On September 24, 2021, the City received a With Prejudice settlement offer from the applicant's lawyers, Aird & Berlis, which was amended on September 29, 2021 and is attached as Public Attachment 1 (the "**With Prejudice Settlement Offer**"). The offer contains revised plans, including a site plan, attached as Public Attachment 2 (the "**Revised Plans**"). The applicant intends to present the Revised Plans to the OLT for approval.

In response to the concerns raised by City staff in meetings with the applicant, and in response to discussions the applicant had with City staff and SERRA during the mediation, the Revised Plans include a number of modifications.

The Appealed Proposal (2020)

The zoning by-law amendment application submitted in 2020 was for a new 38-storey apartment building (129.6 metres to the top of the mechanical penthouse) consisting of a 4-12 storey base building and a tower above, proposed for the part of the site currently occupied by the 19 townhouse rental dwelling units. The existing 18-storey rental apartment building and rental units would be retained. The proposed base building in this proposal contains two-storey grade related units with private patio space along the north, west and south side of the building and a private courtyard in the centre of the site. The proposed base building is set back between 6-14 metres from Balliol Street, 6.2 metres from the west property line, 7.5 metres from the rear property line and 8.5 metres from the east property line. Above the fourth storey (16.6 metres), the building steps back 3 metres on the north and west portion of the site adjacent to the 38-storey tower. On the east portion of the site, the proposed base building steps back

9 metres from the fourth storey along Balliol Street, rises to the 11th storey and steps back an additional 9.4 metres before stepping up to 12 storeys (44.6 metres).

In this appealed proposal the tower is located on the west side of the site and has a floor plate of 750 square metres. The proposal includes 1,426 square metres of indoor amenity space and 1,110 square metres of outdoor amenity spaces. The overall total amenity space provided is 2,536 square metres or 4.5 square metres per unit. In addition to amenity space, residents would have access to a landscaped courtyard, dog run and dog relief area at ground level. Vehicular access to the site is proposed from two access points on Balliol Street. Access to the parking and loading areas would be from the east side of the site. Pedestrian access to the development would be from the walkways on the north, south and west side of the building for the ground-level units and internal access for all units from a lobby off the main courtyard.

With Prejudice Settlement Offer (2021)

The proposal in the With Prejudice Settlement Offer is for a 37 storey building with a maximum tower floorplate of 785 square metres. There is a 2-4-6-8 storey base building, with the tower on one side. There is a new north-south 4-metre wide midblock connection on the east side of the site. All 19 of the existing townhouses on the site will be replaced in the podium of the new building and these replacement units shall contain no less than 2,905 square metres of gross floor area. Eleven of the grade-related rental replacement townhouses shall have direct access to the outdoors while eight of the stacked townhouses shall have shared access to the outdoor amenity space on the third floor of the podium. The townhouse replacement units will be comprised of 17 three-bedroom units and two two-bedroom units, and a maximum of five of the three-bedroom units may be four-bedroom units upon confirmation of the unit mix in the existing 19 rental townhouses.

The With Prejudice Settlement Offer proposes a unit mix of 10 percent net new three - bedroom units (ie. not including the replacement units), 15 percent of the net new units will be two-bedroom units, and an additional 15 percent of the units will be capable of being converted to two- or three- bedroom units. There will be space for a private daycare on the site as shown on the Revised Plans, which will be secured as a legal convenience in the Section 37 Agreement; there is no obligation on the applicant to maintain the daycare should an operator not be found or continued on the site.

As part of the With Prejudice Settlement Offer the applicant is providing an onsite parkland dedication of 904 square metres, to be provided in the location shown on the Site Plan in the Revised Plans. The parkland dedication includes the statutorily required parkland dedication as per Section 42 of the Planning Act and a further over-dedication of 472 square metres. The additional value of the over-dedication will constitute the applicant's community benefit and will be secured as such in the Section 37 Agreement. The applicant will convey the parkland to the City at the earlier of three years following the issuance of the first above-grade building permit and the registration of the Plan of Condominium for the new building.

The With Prejudice Settlement Offer secures the rental tenure of the existing 267 rental dwelling units on the site and the 19 replacement townhouses for 20 years, and includes a tenant relocation package. The Offer also includes a number of tenant amenity enhancements including all 267 existing rental dwelling units having new air conditioning units installed over/on their balconies or having central air conditioning installed, improvements to the existing laundry rooms, a dog relief/dog run area provided in a new landscaped area to the rear of the existing building, maintenance and repair of the existing lobby doors, and the introduction of a new garbage/recycling facility.

COMMENTS

The City Solicitor requires further instructions on this matter. This report is about ongoing litigation before the OLT 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

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Public Attachment 1 - Letter from Aird Berlis dated September 29, 2021 containing With Prejudice Settlement Offer

Public Attachment 2 - Revised Plans dated June 22, 2021 by BDP Quadrangle

Confidential Attachment 1 - Confidential Information