

89 to 109 Niagara Street – Authority to Amend Section 37 Agreement

Date: March 30, 2021

To: Toronto and East York Community Council

From: Director, Community Planning, Toronto and East York District

Ward 10 - Spadina-Fort York

Planning Application Numbers:

12 130868 STE 19 OZ, 17 271399 STE 19 SA, 20 156221 STE 10 MV

SUMMARY

This report seeks City Council authorization to amend the existing Section 37 Agreement for the properties at 89 to 109 Niagara Street to update and modify conditions related to the heritage conservation strategy and replacement rental housing units, in accordance with revisions arising from the Site Plan Control review process.

On August 25, 2014, Council approved site-specific Zoning By-law 644-2015 permitting a redevelopment conserving the heritage buildings along the site's Niagara Street and Tecumseth Street frontages, and the addition of a new building with two taller elements of 12 and 14 storeys in its southerly portion, separated by a large courtyard in the centre of the site. The approved design required vehicles to pass through the courtyard to access the parking garage entrance located on the east side of the site. The rezoning approval secured a specific heritage conservation strategy as well as specific criteria for the replacement of 21 rental housing units in the Section 37 provisions of the by-law and resultant Section 37 Agreement. The properties were designated under Part IV of the Ontario Heritage Act and a Heritage Easement Agreement was registered.

A Site Plan approval application was subsequently submitted and reviewed by staff, incorporating several design revisions. The revised proposal continues to conserve the exterior of the heritage properties and will not significantly impact the three dimensional form of the buildings, however the application now proposes the removal and reconstruction of the interior of the buildings to provide level floors, structural strength, fire separations and acoustic mitigation. At the request of City staff, the applicant also worked to relocate and reconfigure the parking garage access to reduce vehicular travel in the courtyard, which necessitated revisions to the southerly building including minor changes to the configurations of the 21 replacement rental housing units.

A minor variance application to permit the revised proposal is scheduled to be heard by the Committee of Adjustment on April 28, 2021. Staff support the requested variances, and recommend that City Council authorize the City Solicitor to amend the Section 37 Agreement as necessary, should the Committee of Adjustment approve the variances.

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council authorize the City Solicitor to amend the registered Section 37 Agreement, and any other necessary agreements, satisfactory to the Chief Planner and Executive Director, City Planning, and the City Solicitor, securing the following matters consistent with the provisions of By-law 644-2015 as varied:
 - a. revisions to clauses relating to the location and physical specification of the 21 rental housing units reflecting the individual rental housing floor plans prepared by Core Architects dated April 6, 2020, including provision that no more than four of the 21 rental housing units may have interior bedrooms; and
 - b. revisions to clauses relating to the Heritage Conservation Plan, reflecting the conservation strategy in the Heritage Impact Statement prepared by Philip Goldsmith, Architect, dated July 19, 2019.
2. City Council authorize the City Solicitor and any appropriate City Officials to take such actions as are necessary to implement the foregoing, including execution of the Section 37 Amending Agreement, and
3. City Council direct that, prior to final Site Plan Approval for the development at 89 to 109 Niagara Street, the owner be required to enter into the Section 37 Amending Agreement and that the owner has obtained final approval of the Minor Variance application for the subject property..

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

At their meeting of August 25, 2014, City Council adopted the recommendations of reports dated May 26, 2014, June 11, 2014 and June 30, 2014 from the Director, Community Planning, Toronto and East York District, and approved the Zoning Amendment as By-law 644-2015. The Reports and By-law can be viewed at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.TE33.6>

On January 9, 2015, the Toronto Preservation Board adopted the recommendations of a report from the Director, Urban Design dated December 31, 2014, recommending designation of the property under Part IV of the Ontario Heritage Act, and authority to enter into a Heritage Easement Agreement. On January 13, 2015, Toronto and East York Community Council adopted the recommendations of said Report.

At their meeting of February 10, 2015, City Council adopted the recommendations of the Intention to Designate report. The Intention to Designate Report can be viewed at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.TE3.5>

On November 12, 2019, the Toronto Preservation Board adopted the recommendations of a report from the Senior Manager, Heritage Preservation Services, dated October 25, 2019, recommending approval of alterations to the heritage properties and authority to amend the Heritage Easement Agreement. On December 3, 2019, Toronto and East York Community Council adopted the recommendations of said Report.

At their meeting of December 17, 2019, City Council adopted the recommendations of the Alterations Report. The Alterations Report can be viewed at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.TE11.11>

BACKGROUND

Approved Zoning Amendment Proposal

The version of the proposal for which site-specific Zoning By-law 644-2015 was approved by Council, proposed a new mixed-use development which included the retention and reuse of the existing heritage buildings facing Niagara Street, commonly referred to as the "coffin factory", and the addition of two residential elements of 12 and 14 storeys in height connected by a five-storey base building in the southerly half of the site.

This proposal involved whole building conservation of the heritage buildings with minimal alterations, including the preservation and restoration of exterior walls of the heritage buildings and the demolition of non-original additions at the rear and along Tecumseth Street. The proposal also retained the interior floors and structural elements of the existing heritage buildings with some modifications to remove existing interior partitions and provide a central corridor serving units facing north and south.

The conserved heritage building was separated from the new residential building in the southerly half of the site by a central courtyard. The only proposed vehicular point of access to the site was from Tecumseth Street, although vehicles could exit the site at either the same access or via a one-way breezeway through the heritage building to Niagara Street. The ramp to the underground parking garage was to be located in the east half of the site, requiring vehicles to pass through the courtyard.

The Section 37 Agreement, and a Heritage Easement Agreement (HEA), secured the specific heritage conservation strategy proposed and architectural floor plans showing locations of replacement rental units.

Site Plan Application Proposal

On May 31, 2016, Shimcor Investments sold the subject property to its current owner, Hagler Properties Inc. (Aspen Ridge Homes Limited). On December 5, 2017, the current owner submitted a Site Plan application, which was deemed complete on August 23, 2019, and has been reviewed by staff and commenting partners. The design

of the development proposal has evolved from the version of the project for which zoning was approved, but maintains the same general overall scale, massing and configuration .

The most significant divergence for the heritage buildings is that their interior is now proposed to be entirely removed and rebuilt to provide the required structural strength, level floors, fire separations and acoustic properties. The new floors will be set at or close to the levels of the existing floors maintaining their relationship to the existing windows. The revised proposal continues to preserve and restore the exterior of the heritage building, with some minor alterations to reflect changes to the interior.

The applicant also worked collaboratively with City staff to relocate and reconfigure the parking garage entrance from its initial approved location on the east side of the courtyard to being integrated into the westerly tower of the new south building, removing much of the vehicular traffic from the courtyard. This provides a more programmable and attractive outdoor space, creates a safer pedestrian and cycling environment, and provides better linkages to the future City park at 28 Bathurst Street. Relocating the garage entrance in the new south building resulted in changes to the interior floor layouts that are inconsistent with the rental floor plans secured in the Section 37 Agreement, and necessitated that six of the 21 live/work replacement rental housing units be re-located into the heritage building and that the remaining units be reconfigured.

Inconsistencies with Approved Section 37 Provisions

The design revisions set out above resulted in a number of inconsistencies with the provisions secured in Schedule 'A' of site-specific Zoning By-law 644-2015, including as to how they were implemented in the Section 37 Agreement.

In relation to the heritage matters, Provision 12 in Schedule 'A' of the By-law requires that the Heritage Conservation Plan be consistent with the conservation strategy set out in the Heritage Impact Statement dated February 2012 and revised March 2014, prepared by Bernard H. Watt Architect, all to the satisfaction of the Manager, Heritage Preservation Services", which is secured in Clause 5.9 of the Section 37 Agreement, and in the Heritage Easement Agreement. The Conservation Plan for the revised proposal is based on a new conservation strategy set out in the Heritage Impact Statement prepared by Philip Goldsmith, Architect, dated July 19, 2019, and is not consistent with that of the 2014 Heritage Impact Statement prepared by Bernard H. Watt Architect.

In relation to the 21 replacement live/work rental units, the By-law and Section 37 Agreement set out minimum requirements for the 21 rental housing units including unit mix, unit sizes, affordable and mid-range rent by unit type, general location, number of storeys, interior bedrooms, balconies, patios, and access to all common facilities of the buildings.

Provision 1.(c) in Schedule 'A' requires that the units will generally be provided in accordance with the rental housing floor plans prepared by Bernard Watt Architect comprising Ground Floor (Drawing No. A-03) dated May 26, 2014, Second Floor

(Drawing No. A-06) dated May 15, 2014, and Third Floor (Drawing No. A-07) dated May 15, 2014, which is secured primarily in Clauses 2.2 and 2.4 of the Section 37 Agreement. In the revised proposal, the 21 rental housing units are provided in accordance with rental housing floor plan drawings A204, A205 and A206 prepared by Core Architects dated April 6, 2020 for the Ground Floor, Level 2 and Level 3.

Provision 1.(i) requires that of the 21 units, no more than three units may have interior bedrooms and no single unit shall have more than one interior bedroom, which is primarily secured in Clauses 2.2, 2.4 and 2.5 of the Section 37 Agreement. In the revised proposal, four of the 21 units will have interior bedrooms, though none will have more than one interior bedroom..

Provision 1.(k) requires that at least one of the two-storey townhouse-style units located on the ground floor and second floor of the southerly building shall have a patio, which is primarily secured in Clauses 2.2, 2.3 and 2.4 of the Section 37 Agreement. In the revised proposal, the townhouse-style units have patios but their location is inconsistent with that secured in the Section 37 Agreement.

COMMENTS

Heritage Impact Statement & Conservation Strategy

Heritage Planning staff worked with the applicant through the Site Plan Review process to review and refine the proposed development of the heritage properties and is satisfied the proposal meets the intent of the Planning Act, the Provincial Policy Statement, the Growth Plan and the City of Toronto's Official Plan. Specifically, the proposal complies with the Standards and Guidelines for the Conservation of Historic Places in Canada, as set out in the staff report titled "Alterations to Heritage Properties at 89-109 Niagara Street and Authority to Amend the Existing Heritage Easement Agreement at 89-109 Niagara Street", dated .

The Toronto Preservation Board adopted the recommendations of the Alterations Report at its meeting of November 12, 2019, as did Toronto and East York Community Council at its meeting of December 3, 2019. City Council adopted the recommendations of the Alterations Report on December 17, 2019, approving the alterations to the heritage properties subject to conditions ensuring that all required approvals are obtained and that work is completed satisfactorily and in accordance with the Conservation Plan.

These conditions included that the owner enter into and register on the properties at 89 to 109 Niagara Street one or more agreements with the City pursuant to Section 37 of the Planning Act, all to the satisfaction of the City Solicitor and the Senior Manager, Heritage Planning, with such facilities, services and matters to be set forth in the related site specific Zoning By-law Amendment, and any required minor variances, giving rise to the proposed alterations, including amongst other matters, securing the final project specifications, preparation and thereafter the implementation of a Heritage Lighting Plan, a Signage Plan, an Interpretation Plan and requiring a letter of credit to secure all work included in the approved Conservation Plan and approved Interpretation Plan, including provision for upwards indexing.

Replacement Live/Work Rental Units

The provisions in site-specific Zoning By-law 644-2015 and the associated Section 37 Agreement secured a total of 21 live/work rental housing units, in locations and configurations based on plans submitted by the subject property's previous owner. These units were secured as rental housing in the form of 13 affordable units and 8 mid-range units, for a period of at least 20 years, with affordability provisions for the first 15 years, followed by a gradual phase-out to market rents, and with priority selection for existing tenants of 89-109 Niagara Street and others meeting artist eligibility criteria.

Secured requirements include detailed criteria for the features of the 21 rental housing units including the unit mix, minimum unit sizes, the designation of affordable and mid-range rent units by unit type, number of storeys within units, presence of interior bedrooms, and provisions for balconies and patios, in addition to securing access to all common facilities of the buildings including amenity spaces, storage lockers, bicycle and automobile parking spaces. The Rental Unit Floor Plans securing these details were reviewed by City staff at that time, and incorporated into the Agreement.

As part of the Site Plan Application, Housing Policy staff received revised floor plans dated April 6, 2020 from Core Architects on behalf of the owner showing revised unit layouts for the 21 rental housing units. In the revised plans, six of the 21 rental units would be included on the second floor of Building A and 15 rental units would be included on the first three storeys of Building B. The revised proposal continues to include the provision of the same number of rental housing units with affordable (13) and mid-range (8) rents, of which eight are designated artist live-work rental units that will be reserved for priority selection by households meeting artist eligibility criteria and two are designated family rental units that will be reserved for priority selection by family households.

The allocation of the 21 rental housing units will be completed according to seniority, based on the length of time each tenant lived at 89 to 109 Niagara Street, and with each tenant's choices considered in order of their preference. As mentioned above, two of the units will be reserved for priority selection by families and eight of the units will be reserved for artists. All aspects of the tenant relocation and assistance plan, other than the revisions to the rental housing floor plans by Core Architects and the maximum number of rental units with interior bedrooms, are being carried out in accordance with the original Section 37 Agreement.

Staff are satisfied with the revised rental housing floor plans, and recommend that the Section 37 Agreement be amended to address the areas of inconsistency, including those clauses specifying the secured rental housing floor plans so that the 21 rental housing units may generally be provided in accordance with the individual rental housing floor plans prepared by Core Architects dated April 6, 2020, and those clauses relating to interior bedrooms so that no more than four (4) of the 21 rental housing units may have interior bedrooms, and no single unit shall have more than one (1) interior bedroom.

Committee of Adjustment

A minor variance application to permit the revised proposal was submitted on June 15, 2020 and is scheduled to be heard by the Committee of Adjustment on April 28, 2021.

The minor variance application seeks to vary a number of standards set out in By-law 644-2015, including certain building heights and setbacks set out on Map 2 of the By-law, the location of rooftop structures, the location and minimum floor area of non-residential uses within the development, and the minimum number of parking spaces required. In addition to the requested variances to the By-law standards, the application requests variances to the Schedule "A" Section 37 provisions of the By-law to address the changes to the heritage conservation strategy and rental housing units described in this report.

Staff support the requested variances subject to conditions to ensure the owner enters into an amending Section 37 Agreement with the City to secure the revised heritage conservation and rental housing unit matters as set out in this report.

Staff recommend that City Council authorize the City Solicitor to amend the Section 37 Agreement as necessary to implement the revisions described in this report, should the Committee of Adjustment approve the application.

CONTACT

John Duncan, Planner
Tel. No. (416) 392-1530
E-mail: John.Duncan@toronto.ca

SIGNATURE

Lynda H. Macdonald, MCIP, RPP, OALA, FCSLA
Director, Community Planning
Toronto and East York District