

390 to 440 Dufferin St and 41 Alma Avenue – City-Initiated Zoning Amendment – Final Report

Date: June 13, 2022

To: Toronto and East York Community Council

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

Ward: 9 - Davenport

Planning Application Number: 22 127670 STE 09 OZ

SUMMARY

This report recommends approval of the City-initiated application to amend the Section 37 Provisions set out in site-specific Zoning By-law 367-2019(OMB) for the property at 390 to 440 Dufferin Street and 41 Alma Avenue. The proposal would revise the terms of the previously secured obligation for the City and owner to enter into a lease for a small business incubation centre, to allow the City to elect not to enter into the lease and the owner to provide a cash payment towards local community benefits instead.

This report further recommends that staff be authorized to acquire part of the subject lands from the 390 Dufferin GP Inc. in its capacity as general partner of 390 Dufferin Residences LP for the extension of the West Toronto Railpath in a fair market value exchange for balcony encroachments above a future public street, and recommends that a reduced annual licence fee be authorized for the owner's temporary use and maintenance of the future public street required to be conveyed by the owner to the City in advance of its dedication.

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council amend former City of Toronto Zoning By-law 438-86, as amended by Zoning By-law 367-2019(OMB) for the lands at 390 to 440 Dufferin Street and 41 Alma Avenue substantially in accordance with the draft Zoning By-law Amendment forming Attachment 6 to the report (June 13, 2022) from the Director, Community Planning, Toronto and East York District
2. City Council authorize the City Solicitor to submit the necessary bill(s) to implement the foregoing recommendation provided the City Solicitor is satisfied that the appropriate legal mechanisms are in place to ensure that no building permit will issue until such time as the Section 37 Agreement is executed and registered.

3. City Council require the Owner to enter into an Agreement pursuant to Section 37 of the Planning Act to further amend the existing Section 37 Agreement to provide for the City to be able to exercise an option to accept a cash payment of \$2,416,451.00 for local community benefits in the vicinity of the subject site.

4. City Council authorize the City Solicitor to make such stylistic and technical changes to the draft Zoning By-law Amendment as may be required.

5. City Council authorize the City's acquisition of the parcel of land described in Attachment 2 (the "WTRP Requirement") from 390 Dufferin GP Inc. in its capacity as general partner of 390 Dufferin Residences LP (the "Owner"), in exchange for the notional market value of the stratified parcels described in Attachment 2 (the "Balcony Encroachments") to be retained by the Owner, all substantially on the terms and conditions set out in Attachment 2, and including such other terms as deemed appropriate by the Executive Director, Corporate Real Estate Management or their designate, and in a form satisfactory to the City Solicitor.

6. City Council authorize the City to enter into a licence agreement with the Owner for the temporary use of the Future Road until dedicated a public highway, substantially on the terms set out in Attachment 4 and including such other terms as deemed appropriate by the Executive Director, Corporate Real Estate Management or their designate, and in a form satisfactory to the City Solicitor.

FINANCIAL IMPACT

The Recommendations of this report have financial implications as described below.

The City Planning Division confirms that there are no financial implications resulting from Recommendations 1 to 4 included in this report in the current budget year or in future years.

Recommendations 5 and 6 have financial implications in the current and future budget years. The WTRP Requirement will be acquired for nominal compensation in exchange for the notional value of the Balcony Encroachments as described below.

City appraisal staff have determined that the Balcony Encroachments located above the Future Road are valued at \$140,000 while the WTRP Requirement was appraised at a value of \$108,000. The exchange will be for nominal consideration however, the City of Toronto will be responsible for the registration costs of \$78.79, and the Land Transfer Tax of \$805, upon closing with funding available from the 2022-2031 Council Approved Capital Budget and Plan for Transportation Services under capital account CTP820-05-01.

The City will also enter into a licence agreement with the Owner for the temporary use of the Future Road until dedicated a public highway for a reduced annual licence fee of \$10,000 per year. The Owner will be responsible for all liabilities, repairs and maintenance in the interim.

The Deputy City Manager and Chief Financial Officer have reviewed this report and agree with the financial impact information.

DECISION HISTORY

On March 22, 2012, Planning and Growth Management Committee directed staff to review an application to amend the Official Plan for the purpose of permitting residential development on the subject lands, concurrently, and in the context of the statutory Five Year Review of the Official Plan.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.PG12.7>

At its meeting of December 16, 17 and 18, 2013, City Council considered a request to convert these employment lands for non-employment uses as part of the Municipal Comprehensive Review (MCR). At the same meeting, City Council adopted Official Plan Amendment 231 (OPA 231), which designated the subject lands as General Employment Areas.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.PG28.2>

In January 2014, the City submitted OPA 231 to the Minister of Municipal Affairs and Housing for approval. On July 9, 2014, the Minister of Municipal Affairs and Housing issued a decision confirming Council's action to retain the property for employment purposes only. The applicant subsequently submitted an appeal to the Minister's decision of OPA 231.

On August 25, 2014, City Council authorized the City Solicitor, together with City Planning staff and any other appropriate staff, to attend the Ontario Municipal Board (OMB) hearing in opposition to the applications.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.PG35.9>

On March 31, 2015, City Council requested the Chief Planner to conduct a review of the lands known as the Dufferin Triangle Lands, which includes the subject lands.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.PG2.11>

On June 10, 2015, City Council received a settlement offer and directed the City Solicitor and other staff to attend at the OMB hearing in support of a revised development proposal, and directed the City Solicitor to ask the OMB to amend OPA 231 to designate the lands as Mixed Use Area and allow the revised development to proceed in conformity with the Official Plan.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.CC7.6>

In June 2015, the OMB issued a partial order approving the settlement reached between the City and the applicant. On June 28, 2016, the Board issued its final order approving the Official Plan Amendment and Zoning By-law Amendment applications, permitting the redevelopment of the lands for mixed industrial, commercial and residential use in accordance with the settlement proposal.

On March 12, 2019, the Committee of Adjustment, Toronto and East York District, granted consent to a conveyance to create a parcel of land for the future public street, and requiring the Owner to enter into a consent agreement with the City.

On July 14, 2021, City Council directed the Chief Planner to enter into an amending Section 37 agreement with the Owner, to hold a letter of credit in the value of the Small Business Centre benefit, and to bring a report to Council if any amendments to the Zoning By-law or Section 37 agreement are required.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.MM35.43>

On February 2, 2022, City Council authorized the Director, Corporate Real Estate Management, to continue negotiations to acquire part of the property for the purpose of constructing the West Toronto Railpath Extension, and authorized the initiation of the expropriation process if such negotiations were unsuccessful.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.MM39.28>

SITE AND SURROUNDING AREA

Description: The site is located on the west side of Dufferin Street, running from Alma Avenue to the Lower Galt Subdivision rail line. The site is 6,850 square metres in area, and is occupied by three mixed-use buildings ranging from 9 to 13 storeys in height, with the two southerly buildings separated from the northerly building by a future public road.

Official Plan Designation: *Mixed Use Areas* south of the future public road, and stratified *Employment Areas / Mixed Use Areas* north of the future public road

Zoning: 'CR' under former City of Toronto Zoning By-law 438-86 as amended, subject to site-specific regulations as set out in By-law 367-2019(OMB).

Surrounding Land Uses:

North: On the north side of Alma Avenue is a one-storey commercial building, with a mix of small-scale employment and residential buildings extending north along Dufferin Street.

South: To the south, the site abuts the Metrolinx Lower Galt Subdivision rail corridor and the future extension of the West Toronto Railpath (WTRE).

East: On the east side of Dufferin Street are located small-scale residential buildings, a residential condo building and a future park.

West: To the west, the site abuts a produce distribution warehouse and retail operation (Riverview Produce Inc.), as well as various small-scale industrial uses.

THE APPLICATION

Description: Amendments to the Section 37 Provisions in Zoning By-law 369-2019(OMB), relating to the provision of a Small Business Incubation Centre within the northerly building on the lands.

Additional Matters:

Future Public Road: The Owner is required to convey to the City the Future Road, an 18.5m wide parcel for future use as a public street, which will not be dedicated until such time as the abutting property to the west is redeveloped. In the interim, the Owner will require a licence agreement in order to use and maintain the Future Road as a private driveway.

Additionally, the development as constructed includes balconies which encroach into the Future Road (the "Balcony Encroachments"), and which would generally require an encroachment agreement. However, as discussed further below and in Attachment 2, City staff propose to exclude the Balcony Encroachments from the Future Road lands to be conveyed by the Owner to the City, with the market value of the retained Balcony Encroachments forming the consideration for the conveyance of the WTRP Requirement from the Owner to the City.

West Toronto Railpath Expansion: The expanded West Toronto Railpath will run on the north side of the rail corridor, and requires the acquisition of the WTRP Requirement, being a triangular parcel approximately 5 metres by 5 metres at the southwest corner of the lands, designated as Part 1 on Plan 66R-31729.

Additional Information

See Attachment 1 to this report for the location map, Attachment 3 for the reference plan showing the lands to be acquired for the WTRP, and Attachment 5 for the draft reference plan showing the Future Road and Balcony Encroachments.

Reasons for Application

The proposal requires an amendment to site-specific Zoning By-law 367-2019(OMB) to revise the terms within its Appendix I - Section 37 Provisions which oblige the City and owner to enter into a lease for a small business incubation centre (SBIC), as the City has been unable to secure an operator for the SBIC. The proposal would allow the City to elect not to enter into the lease and the owner to provide a cash payment towards local community benefits instead.

Site Plan Control

The applicant has filed an application for Site Plan Approval to permit the proposed development, which has been reviewed by staff and commenting partners. Notice of Approval Conditions (NOAC) were issued on December 21, 2018, and subsequently amended on February 25, 2020 and January 12, 2021.

Provincial Land Use Policies

The application has been reviewed to determine its consistency with the Provincial Policy Statement (2020) (PPS), conformity with A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020) (Growth Plan), and conformity to the City's Official Plan. The PPS provides policy direction province-wide on land use planning and development to promote strong communities, a strong economy, and a clean and healthy environment. The Growth Plan, builds upon the policy foundation provided by the PPS and provides more specific land use planning policies to address issues facing the Greater Golden Horseshoe region.

Agency Circulation

The application has been circulated to all appropriate agencies and City Divisions. Responses received have been used to assist in evaluating the application.

COMMUNITY CONSULTATION

Due to the technical nature of the proposed amendments, no Community Consultation Meeting has been held.

Statutory Public Meeting Comments

In making their decision with regard to this application, Council members have had an opportunity to view the oral submissions made at the statutory public meeting held by the Toronto and East York Community Council for this application, as these submissions are broadcast live over the internet and recorded for review.

COMMENTS

Provincial Land-Use Policies: Provincial Policy Statement and Provincial Plans

The proposal has been reviewed and evaluated against the PPS and the Growth Plan. Staff have determined that the proposal is consistent with the PPS and conforms with the Growth Plan.

Land Use

This application has been reviewed against Site and Area Specific Policy 516 applying to the lands, and the economic, employment, and height and density incentive policies of the Official Plan. SASP 516 permitted the stratified redesignation of the lands from Employment Areas to Mixed Use Areas, but required that a minimum of 5,550 square metres of non-residential gross floor area be provided as part of any redevelopment, in order to maintain the existing quantity of employment floor space upon the lands. Site-

specific Zoning By-law 367-2019(OMB) implemented SASP 516, and required that 5,550 square metres of employment floor space be provided within the northerly building which has the stratified Employment Areas designation.

The proposed amendment would remove the requirement for a Small Business Incubation Centre on the lands, however would not change the nature of nor reduce the amount of employment floor space required to be provided, and continues to conform with the relevant Official Plan policies regarding maintaining a strong and diverse economic base, and supporting employment and economic development.

Small Business Incubation Centre Community Benefit

By-law 367-2019(OMB) secured an obligation, under Section 37 of the Planning Act, for the Owner to provide a Small Business Incubation Centre (SBIC) for innovative tech and light manufacturing start-ups within the northerly building on the site, comprising the entire leasable non-residential floor space on its first and second storeys, with fit-up costs and subsidized rent over a 25-year period collectively valued at \$2,200,000.

The By-law's provisions directed the City and Owner to enter into a lease for the space, with an option for the City to terminate the lease at the time of the initial 10-year renewal and receive the remaining indexed value of the rent subsidy as a cash contribution towards other community services and facilities. The By-law's provisions did not provide for a situation where the City and Owner do not enter into the lease nor for conversion of the rent subsidy to a cash payment prior to the 10-year lease renewal.

Economic Development & Culture staff issued a Request for Proposals on June 15, 2018, seeking a qualified non-profit partner or academic institution to operate the space. A partnership between George Brown College, MaRS and ReMAP was selected in June 2019 as the operator for the incubator, however these institutions backed out of the proposal in mid-2021 due to challenging business conditions. A reissued Request for Proposals seeking a new partner to implement and operate the SBIC was released on February 14, 2022, but closed on March 14, 2022 without any qualified respondents.

Given the lack of partner to operate the SBIC facility, staff recommend that the City not enter into the lease and instead take steps to remove the lease obligation from the By-law. This will enable the Owner to seek tenants to lease the space for other permitted employment uses.

The proposed amendment to the zoning by-law would revise the Section 37 provisions of By-law 367-2019(OMB) to allow the City, at its discretion, to either enter a lease for the SBIC under the previous conditions, or take a cash payment in the value of the fit-up costs and rent subsidy, to be paid prior to final Site Plan approval. The value of the cash contribution would be \$2,416,451.00, which represents an indexing of the original \$2,200,000.00 value negotiated with the Owner, and would be directed to other community services or facilities that will benefit the community in the vicinity of the lands.

The proposal would ensure that appropriate community facilities can be provided in geographic proximity to the development in relation to the previously approved height and density, and conforms to the policies of Section 5.1.1 of the Official Plan.

Future Public Right of Way

By-law 367-2019(OMB) shows an 18.5 metre right-of-way to be provided to the City for a future public road, unencumbered and un-stratified. This was an integral part of the negotiated settlement between the parties in 2016 as the provision of this public road was considered to be important to facilitate the future redevelopment not only of this site, but of the broader area, particularly the large property to the west of the subject lands.

Although the right of way was supposed to be conveyed to the City without physical encumbrance, balconies constructed by the Owner on the second through sixth floors of the central building encroach over the future right of way (the “Balcony Encroachments”), as shown illustrated as Parts 35 and 36 on a draft Strata Plan of Survey of Part of Lots 7 and 8, unnamed road (closed by by-law 9889, INST. WG27120 and by-law 6389, INST. 69967J) Registered Plan 294 York, City of Toronto, prepared by KRCMAR as Drawing 06-055RP03 dated February 24, 2022, (Attachment No. 5), from a height of approximately 3.7 to 28.3 metres above grade. The Balcony Encroachments will not interfere with pedestrian or vehicular movements on the Future Road, but are an encumbrance on what was supposed to be conveyed to the City free and clear. To resolve the situation, City Staff recommend that a stratified right-of-way be accepted, excluding the Balcony Encroachments. As a result, the City will obtain a smaller three dimensional parcel of land for the Future Road than initially negotiated, and the Owner must provide compensation equal to the fair market value of the Balcony Encroachments.

The Balcony Encroachments were valued by appraisal staff (ballpark appraisal only) at \$140,000.00.

The Future Road, excluding the Balcony Encroachments, are illustrated as Parts 2 and 19 on a draft Strata Plan of Survey of Part of Lots 7 and 8, unnamed road (closed by by-law 9889, INST. WG27120 and by-law 6389, INST. 69967J) Registered Plan 294 York, City of Toronto, prepared by KRCMAR as Drawing 06-055RP03 dated February 24, 2022, being Attachment No. 5.

West Toronto Railpath Extension

By Item MM39.28 adopted by Council on February 2, 2022, City Council authorized the initiation of expropriation proceedings against the owner of 440 Dufferin Street for the lands designated as Part 1 on Plan 66R-31729 (the “WTRP Requirement”). The WTRP Requirement was valued at \$108,000.00 by appraisal staff (ballpark appraisal only).

The WTRP Requirement may require environmental remediation to legalize the City's future use of the property, estimated at a cost of \$40,000.00, born by the WTRP project.

Given that the market value of the Balcony Encroachment and the WTRP Requirement are similar, and that the WTRP Requirement must be acquired as soon as possible in order to begin construction of the WTRP, staff recommend that the compensation to the City for the Balcony Encroachment be satisfied by the Owner through the transfer of the WTRP Requirement to the City for nominal consideration (a land exchange, except that the Owner will simply retain the Balcony Encroachments). This compromise compensates the City for the Balcony Encroachments, and avoids the potential construction delays and costs associated with protracted expropriation proceedings for the WTRP Requirement.

If the City were to continue expropriation proceedings commenced for the WTRP Requirement, the City would be obligated to pay the Owners' reasonable legal and appraisal costs, and the market value of the WTRP Requirement, valued at future date. Such costs could easily approach the \$30,000.00 estimated difference between the two market values noted above. Further, estimated remedial costs do not necessarily entitle the City to reduce expropriation compensation payments without evidence and potentially, litigation. Finally, the amicable acquisition as proposed avoids the delays inherent in the expropriations process, and will allow the construction of the WTRP to move forward more efficiently. Given the totality of the circumstances, accepting the Balcony Encroachments as compensation for the timely acquisition of the WTRP Requirement is fair and reasonable.

Temporary Use of Right of Way

In 2018, the City and the Owner of the site entered into an agreement pursuant to subsections 51(26) and 53(12) of the Planning Act (the "Consent Agreement") providing that once the Future Road was conveyed to the City, it would be licensed back to the Owner until required by the City and dedicated as a public highway. Staff recommends that the Future Road not be dedicated until the lands to the west of the subject site are redeveloped. It is not clear when that will occur.

In the interim, a licence agreement between the Owner and the City is required to govern the use of the City property by the Owner for access to the development, and to ensure that the Owner is responsible for all repairs and maintenance. The Owner will also be required to provide the City with insurance and indemnification. The licence will terminate when the City enacts a by-law dedicating the Future Road as public highway. The general public will have right of access along the Future Road during the licence period.

Corporate Real Estate Management staff have valued the licence fee at \$40,000 a year. However, this valuation does not take into account that the need for this arrangement arose from a City requirement for a future road that will not be used by the public for the foreseeable future, and that the Owner will be responsible for all liabilities, repairs and maintenance in the interim. Further, in light of the value from a City-building perspective of the acquisition of the WTRP Requirement, and the entirety of the transactions relating to the development of this property, staff is of the view that a lower fee could represent market value consideration for the licence and not constitute the granting of a prohibited bonus under Section 82 of the *City of Toronto Act, 2006*. Accordingly, it is recommended that an annual licence fee of \$10,000 is acceptable in this instance.

Conclusion

The proposal has been reviewed against the policies of the PPS (2020), the Growth Plan (2020), and the Toronto Official Plan. Staff are of the opinion that the proposal is consistent with the PPS (2020) and does not conflict with the Growth Plan (2020). Furthermore, the proposal conforms with the intent of the Toronto Official Plan, particularly as it relates to economic, employment, and height and density incentive policies applicable to the non-residential uses, and policies promoting the protection and expansion of active transportation infrastructure.

City Planning Staff recommend that Council support approval of the application.

CONTACT

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SIGNATURE

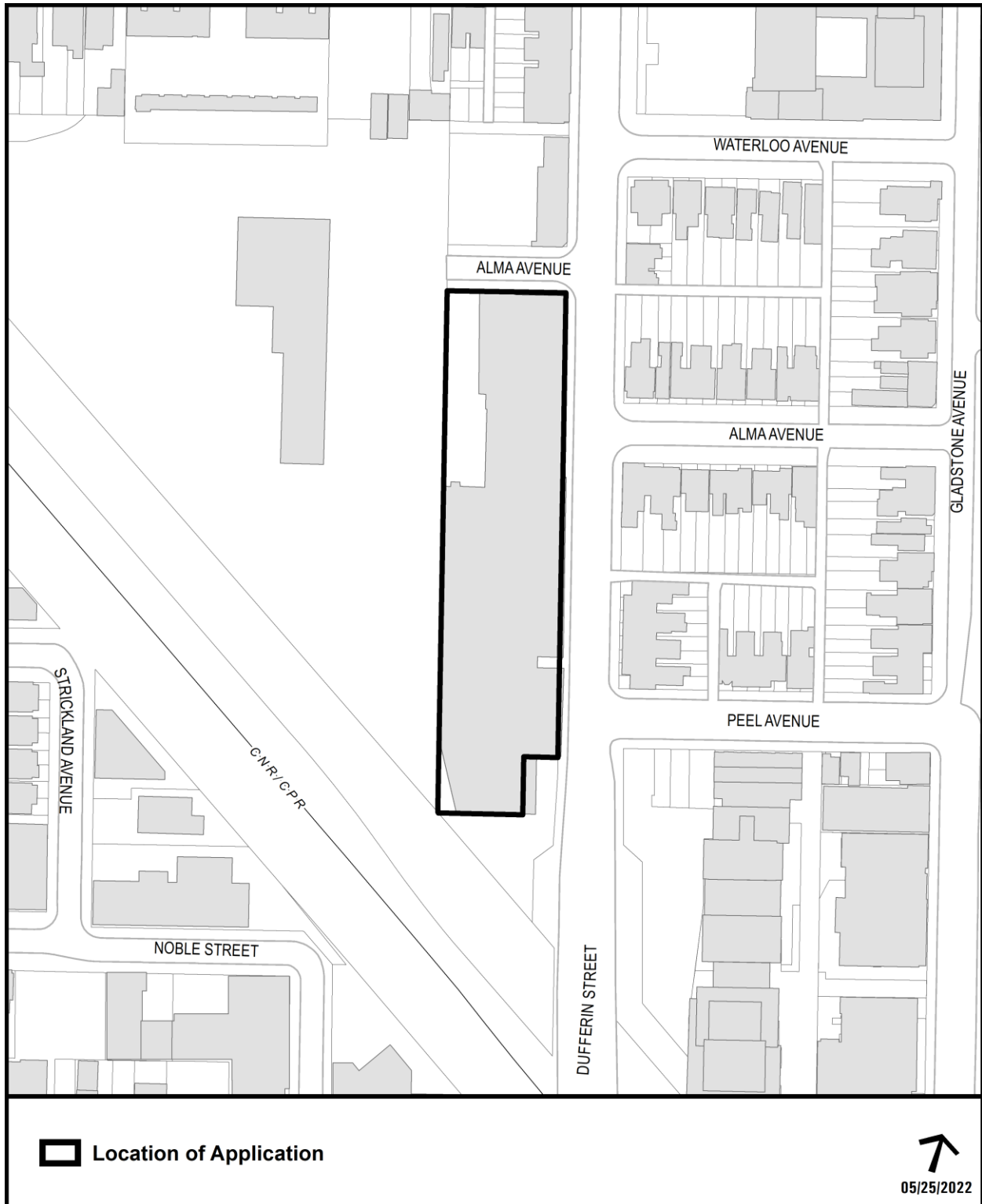
Lynda H. Macdonald, MCIP, RPP, OALA, FCSLA,
Director, Community Planning, Toronto and East York District

ATTACHMENTS

City of Toronto Drawings

- Attachment 1: Location Map
- Attachment 2: Terms for Acquisition of WTRP Requirement
- Attachment 3: Reference Plan 66R-31729 for Acquisition of WRTP Requirement
- Attachment 4: Terms and Conditions for Temporary Licence of Future Road
- Attachment 5: Draft Reference Plan for Future Road
- Attachment 6: Draft Zoning By-law Amendment

Attachment 1: Location Map



Attachment 2: Terms for Acquisition of WTRP Requirement

Vendor:

390 Dufferin GP Inc. in its capacity as general partner of 390 Dufferin Residences LP

Property:

Part 1 on 66R-31729

Price:

\$10.00 plus the notional market value to the Vendor of retaining ownership of the lands identified as Parts 35 and 36 on a draft Strata Plan of Survey of Part of Lots 7 and 8, unnamed road (closed by by-law 9889, INST. WG27120 and by-law 6389, INST. 69967J) Registered Plan 294 York, City of Toronto, prepared by KRCMAR as Drawing 06-055RP03 and dated February 24, 2022, (the "Balcony Encroachments")

Land Transfer Tax Value:

Parties agree no money will be exchanged, and that the value of the Balcony Encroachments is equivalent to the market value of the Property, and for land transfer tax purposes only the market value of the Property is \$108,000 (as determined by the City's appraisers)

Irrevocable Period:

30 days following execution by Vendor

Mortgages:

Vendor agrees to discharge all mortgages/encumbrances on the Property

Closing Date:

90 Days following execution of an Agreement, or on such earlier date as the parties may mutually agree to in writing

Agreement:

Agreement to be entered into by parties setting out additional terms and conditions acceptable Executive Director, Corporate Real Estate Management or their delegate, and in a form approved by the City Solicitor

Closing costs:

City to pay registration costs, closing costs, LTT costs, from CTP820-05-01.

Attachment 4: Terms and Conditions Temporary Licence of Future Road

Licensor: City of Toronto

Licensee: 390 Dufferin Residences LP, by its general partner, 390 Dufferin GP Inc.

Licensed Area: The Future Road, illustrated as Part 2 on Attachment 5.

Term: Commencing on the date upon which the Licensed Area is conveyed to the City and expiring on the date on which the Licensed Area is dedicated by the City as a public highway

Licence Fee: \$10,000 per annum, plus HST, payable in advance upon the commencement date and each anniversary of the commencement date throughout the Term

Use of Licensed Area: A private driveway including, but not limited to, pedestrian and vehicular ingress and egress to and from the Licensee's lands adjacent to the Licensed Area, and for the purpose of constructing, maintaining and operating any building within the Licensee's lands adjacent to the Licensed Area

Licensee Obligations:

- The Licensee shall be responsible for all operating costs related to the use of the Licensed Area including the cost of all repairs, maintenance and utilities in relation to the Licensee's use of the Licensed Area.
- The Licensee shall maintain the Licensed Area in good condition and expeditiously repair at its own expense all damage to any City owned property and improvements thereon caused by any exercise of the Licensee's rights under the Licence.

Licensee's Indemnity and Insurance

- The City and those for whom it is at law responsible shall not be liable for any personal injury or death of, or loss or damage to any property belonging to the Licensee or its employees, invitees or licensees or any other person in, on or about the Licensed Area. The Licensee shall indemnify the City from any claims, demands, losses, costs, charges, actions and other proceedings against the City or its property in respect of any loss, damage or injury to any person or property directly or indirectly arising out of or resulting from the Licensee's use of the Licensed Area or the condition of the Licensed Area.
- The Licensee shall, prior to making use of the Licensed Area, deliver to the City evidence of insurance satisfactory to the City in coverages and amounts satisfactory to the City.

Attachment 6: Draft Zoning By-law Amendment

Authority: Toronto and East York Community Council Item ~ as adopted by City of Toronto Council on ~, 20~

Enacted by Council: ~, 20~

CITY OF TORONTO

Bill No. ~

BY-LAW ~-2022

To amend City of Toronto By-law 367-2019(OMB), being a by-law to amend former City of Toronto Zoning By-law 438-86, as amended, with respect to the lands municipally known as 390-444 Dufferin Street and 41 Alma Avenue

Whereas the Ontario Municipal Board by Decisions issued June 30, 2015 and June 28, 2016, upon hearing an appeal under Section 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended, enacted By-law No 367-2019 (OMB) amending By-law 438-86 for the former City of Toronto with respect to lands municipally known as 390-444 Dufferin Street and 41 Alma Avenue; and

Whereas authority is given to Council by Section 34 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, to pass this By-law; and

Whereas Council of the City of Toronto has provided adequate information to the public and has held at least one public meeting in accordance with the *Planning Act*; and

Whereas the Official Plan for the City of Toronto contains such provisions relating to the authorization of increases in height and density of development; and

Whereas pursuant to Section 37 of the Planning Act, a by-law under Section 34 of the Planning Act may authorize increases in the height and density of development beyond those otherwise permitted by the by-law and that will be permitted in return for the provision of such facilities, services or matter as are set out in the by-law; and

Whereas subsection 37(3) of the Planning Act provides that where an owner of land elects to provide facilities, services and matters in return for an increase in the height or density of development, a municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services and matters; and

Whereas the owner of the land and the City of Toronto wish to amend the requirements of Zoning By-law No. 367-2019 (OMB) that set out the provision of facilities, services and matters pursuant to Section 37 of the Planning Act; and

Whereas the owner of the aforesaid lands has elected to provide the facilities, services and matters hereinafter set out; and

Whereas the increase in height and density permitted beyond that otherwise permitted on the aforesaid lands by By-law 438-86, as amended, are to be permitted in return for

the provision of the facilities, services and matters set out in this By-law which are secured by one or more agreements between the owner of the land and the City of Toronto;

The Council of the City of Toronto enacts as follows:

1. Appendix 1 Section 37 Provisions to Zoning By-law 367-2019 (OMB) is deleted and replaced by the following:

APPENDIX 1
SECTION 37 PROVISIONS

The facilities, services and matters set out herein are required to be provided by the owner to the City at the owner's expense in return for the increase in height and density of the proposed development on the lands as shown on Map 1 of this By-law and secured in accordance with an agreement or agreements pursuant to Section 37(1) of the Planning Act, whereby the owner agrees as follows:

1. The owner will provide a minimum of 5,550 square metres of non-residential gross floor area in the building on Block B to be used as workspace.
2. The owner shall, at the sole discretion of the Chief Planner and Executive Director of City Planning, in consultation with the local Councillor, City Solicitor and the Executive Director of Corporate Real Estate Management, either:
 - a. Prior to Site Plan Approval, provide a cash payment in the amount of \$2,416,451.00 to be allocated towards services or facilities that will benefit of the community in the vicinity of the lands, at the discretion of the Chief Planner in consultation with the Ward Councillor; or
 - b. enter into a 25 year lease with the City for approximately 1,350 square metres of workspace, being all of the leasable workspace on the ground and second storeys of the building on Block B, to be used by the City to establish a small business incubation centre in the building.
3. In the event that owner and City enter into the lease referred to in 2 b) above, the owner acknowledges and agrees that
 - a. The owner consents to the City subleasing the workspace to qualified not-for-profit partners or a post-secondary institution that will operate the space and deliver the small business incubation programming.
 - b. For the term of the 25 year lease the City shall pay rent at a rate of \$6.50/square foot below market rent for light industrial space, assuming that is what the City is using the space for, plus T.M.I., and market rent shall be based on market rent for similar uses in a similar building in a similar area.

- c. The City shall have the opportunity to renew the lease at the end of the 25 year term at market rental rates.
 - d. For the purposes of calculating the rate of market rent in Section 4 above, an appraisal of the leased space will be conducted at the beginning of the lease, and at the beginning of every 5 years thereafter, so that the rent would be adjusted every 5 years based on changes to market rent. For this purpose the City shall provide an appraisal of the leased space and if the City and the owner are unable to agree on the value of the market rental rate both parties shall appoint a mutually agreeable third party appraiser, at the owner's expense, whose appraisal shall be binding for the purpose of determining the applicable market rental rate.
 - e. The owner shall finish the leased workspace to base condition which shall include concrete floors, electrical, HVAC, plumbing and fire services entering the space, a finished washroom but otherwise no partitioning or dry-wall. In addition, the owner shall provide a cash payment to the City in the amount of \$300,000.00 to be used by the City toward finishing said space.
 - f. The lease will contain a termination clause, effective at the 10th year of the lease and every 5 years thereafter, to allow the City to elect to cease leasing the space and take any pro-rata remaining Section 37 funds (to be based upon \$2,200,000.00 indexed from the date of the Section 37 Agreement, less the \$300,000.00 payment referred to in Section 7 above and less all discounted rents already accrued to the City). Those funds shall be used towards other local community benefits at the discretion of the Chief Planner in consultation with the Ward Councillor.
4. A minimum of 10 percent of the dwelling units on the lot shall contain at least three bedrooms meeting the definition of bedroom in the Ontario Building Code.

ENACTED AND PASSED this ~ day of ~, A.D. 2022.

JOHN TORY,
Mayor

JOHN ELVIDGE,
City Clerk

(Corporate Seal)