



CONFIDENTIAL & WITHOUT PREJUDICE

Aaron I. Platt*
***Aaron Platt Professional Corporation**
Direct Line: 289-904-2370
E-mail: aplatt@loonix.com

By E-Mail Only to jason.davidson@toronto.ca & laura.bisset@toronto.ca

June 30, 2023

City of Toronto
Legal Services Division
55 John Street, Station 1260
Metro Hall, 26th Floor
Toronto, ON M5V 3C6

Attention: Jason Davidson & Laura Bisset

Dear Sir and Madam:

**Re: Confidential & Without Prejudice Settlement Offer
Appeal by NJS Sherbourne Inc. ("NJS") pursuant to 34(11) of the *Planning Act*
City of Toronto File Nos: 21 189632 STE 13 OZ & 21 189637 STE 13 RH
O.M.B. Case No. OLT-21-001365
Subject Lands: 383 & 387 Sherbourne Street (the "Subject Lands")**

After considerable effort, a productive Tribunal-led mediation, and fruitful discussions with members of the City's staff, I am pleased to transmit this letter to you outlining the terms of NJS's offer to settle its appeal of the above-noted applications for a Zoning By-law amendment and Demolition of Rental Housing (collectively, the "**Applications**") for the Subject Lands (collectively, the "**Appeals**").

As you are aware, the next Case Management Conference for this matter is scheduled for August 9, 2023, at which time the Tribunal expects to either hear that the parties to this matter have settled or that they intend to proceed with a contested hearing. As you are also aware, the two other parties to this appeal have confirmed that, subject to our client maintaining the tower floorplate location as depicted on the attached Plans (as hereinafter defined) they will not be objecting to the balance of the proposal, as more particularly described in this letter. Finally, there are no individuals or entities with participant status.

At this time, the outstanding issues for the Appeals are only those of the City and relate primarily



to built form issues, the retention of existing rental housing units, and the conservation of significant heritage assets.

Due to deadlines for reporting a matter to Council prior to the August 9th appearance before the Tribunal, we respectfully request that you seek instructions from your client to resolve the Appeals based on the matters identified in this letter.

This offer to settle will expire upon the conclusion of the meeting of Council for the City of Toronto scheduled to commence on July 19, 2023

The Proposal

By way of background, while 383 Sherbourne Street is currently tenanted as a rental building, 387 Sherbourne Street is vacant due to fire damage. Consequently, the tenancies in *that* building were terminated pursuant to the *Residential Tenancies Act* as the entire building was no longer habitable. Since that time, 387 Sherbourne Street has remained vacant. As more particularly described below, the Proposal will facilitate the construction of housing in this area, the replacement of a significant number of unusable rental housing units and the conservation of significant heritage assets.

Through the mediation process, City staff and our client were able to reach consensus on a revisions to the original form of development (the “**Proposal**”) that resulted in a significant and beneficial alteration to the proposed built form for the Proposal.

The Proposal, as revised, provides the opportunity to conserve structurally-sound elements of 387 Sherbourne Street as more particularly identified below, while also conserving 383 Sherbourne Street in its entirety.

Furthermore, in addition to maintaining the existing rental units in 383 Sherbourne Street on the Subject Lands, the revised form of proposal will also result in the replacement of the units lost through fire damage at 387 Sherbourne Street.

Based on those discussions with staff, on May 12, 2023, our client’s land use planning consultant submitted a resubmission package containing updated plans and materials to reflect the outcome from mediation (the “**Resubmission Package**”). Amongst those materials were the following drawings which illustrate the form of the Proposal (the “**Revised Proposal**”) and are the basis for this offer to settle and were included in the above-referenced transmission to the City (collectively, the “**Plans**”):

1. Cover Page, Context Plan & Project Statistics dated April 2023 by Arcadis Architects (Canada) Inc. (“**Arcadis**”) (drawings A000 & A001);
2. Site Plan dated April 2023, by Arcadis (drawings A100);
3. P1 to P2 Floor plans dated April 2023, by Arcadis (drawings A101);



4. Ground Floor plan dated April 2023, by Arcadis (drawings A102);
5. 2nd Floor & 3rd Floor Plans dated April 2023, by Arcadis (drawings A104);
6. 4th Floor & 5th Floor Plans dated April 2023, by Arcadis (drawings A105);
7. 6th-7th Floor & 8th Floor [Plans] dated April 2023, by Arcadis (drawings A106);
8. Tower Floor Plans dated April 2023, by Arcadis (drawings A107);
9. West & North Elevation dated April 2023, by Arcadis;
10. South & East Elevation dated April 2023, by Arcadis;
11. Building Sections dated April 2023, by Arcadis;
12. Aerial Views looking north-east and south-west dated April 2023, by Arcadis; and
13. Revised Shadow Studies dated April 2023 (drawings A501-A506).

The Revised Proposal now contemplates a building 123.04 metres tall (with a 6 m allotment for a mechanical penthouse) containing 18,759 m² of residential gross floor area and 378 residential units (including 44 units previously destroyed by fire and fire suppression). The Revised Proposal will also contain 935 m² of indoor amenity space and 450 m² of outdoor amenity space. There will be a total of 4 barrier-free parking spaces for residents, 2 resident and 2 visitors' parking spaces, along with 341 long-term bicycle parking spaces, 76 short-term bicycle parking spaces, and 1 Type "G" loading space.

In addition to the Plans, our client submitted a Heritage Impact Assessment for both 383 and 387 Sherbourne Street (the "**Updated HIA**"). In short, the Updated HIA notes that the Revised Proposal, shifts the floorplate for the tower northward, over 387 Sherbourne Street to allow for the conservation of the entirety of 383 Sherbourne Street *in situ* – a vast improvement over the original application. Again, given the condition of the structure at 387 Sherbourne Street due to damage from the fire and fire suppression system, only the west (front) elevation will be retained while portions of the north and south elevations will be reinstated and incorporated into the podium of the new residential building. Greater details of the conservation strategy can be found in the Updated HIA and will be subject of the City's standard recommendations with respect to same.

Our client filed an application pursuant to section 111 of the *City of Toronto Act, 2006* (the "**CoT Act**") to address the demolition of the 44 untenanted rental housing units in 387 Sherbourne Street. While that application is intended to proceed to Toronto and East York Community Council (and thereafter Council) in the fall and is not subject to the Tribunal's jurisdiction, our client included an Updated Housing Issues Report (the "**Updated HIR**") with the May 12th transmission to Staff. As more particularly discussed in the Updated HIR, all 44 formerly tenanted units within 387 Sherbourne Street will be replaced in the Revised Proposal as follows:

- 15 affordable bachelor rental units;
- 12 affordable one-bedroom rental units; and



- 17 market rental units (7 bachelor, 10 one-bedroom).

By accepting of this settlement offer, the City acknowledges that the 44 untenanted units formerly within 387 Sherbourne Street, which were destroyed by fire and fire suppression systems, but which our client has agreed to replace as part of the comprehensive settlement, continue to exist.

Details of the replacement strategy are articulated within the Updated HIR. We note that the aforementioned application, pursuant to s.111 of the *CoT Act*, will continue to be processed by staff and will be subject to a further application for 387 Sherbourne to address the replacement of the untenanted units in that building. Our client will continue to participate in the review process, including by attending to such events as meetings with tenants in 383 Sherbourne – one of which has already been scheduled for mid-July. Our client will be making reasonable efforts to locate those few tenants who elected a “right of return” to 387 Sherbourne Street when their tenancies were originally ended as a result of the 2017 fire and legally terminated pursuant to the *Residential Tenancies Act*.

In conformity with Policies 3.1.2.5 & 3.1.2.6 of the Official Plan the Updated HIR also identifies a series of improvements that will be made to 383 Sherbourne Street as a component of the comprehensive development scheme.

Furthermore, the Revised Proposal offers a total of 935 m² (10,059 ft²) of indoor amenity space and 450 m² of outdoor amenity space. As noted in the Updated HIR:

“Amenity areas include but are not limited to an atrium area on the 1st floor; a separate terrace areas (349 and 100 sq. m.) on the 4th floor for outdoor amenity space; indoor amenity spaces of 107 sq. m. and 193 sq. m. on the 4th and 5th floors, respectively; and 518 sq. m. of indoor amenity space on the 8th floor. In total, indoor amenity is provided at a rate of 2.47 sq. m. per unit and outdoor amenity is provided at a rate of 1.19 sq. m. per unit for a total of 4.0 sq. m per unit.”

Access to such amenity spaces will also be granted to the tenants of 383 Sherbourne Street.

The Appeals and Proposed Settlement

Toronto and East Community Council reviewed a Request for Direction Report in respect of the Proposal in May 2022. At the time, it was noted that the Applications were already under appeal.

Notwithstanding the appeals, as noted above, our client has worked with City staff to resolve as many outstanding issues as possible.

Our client now makes this offer to settle the Appeal based on the attached draft form of Zoning By-law amendment which addresses the typical performance standards of an amendment to permit a residential tower. In addition, the matters identified in the Updated HIA are to be more particularly secured through the necessary instruments required to obtain a permit under the



Ontario Heritage Act. In a similar vein, and provided Council approves our client's application pursuant to s.111 of the *CoT Act*, the matters more identified in the Updated HIR will be secured in an agreement made between our client and the City pursuant to said provision. We note that there is likely to be some modification to matters identified in the Updated HIR as a result of finer-grain work on the interior of the rental replacement units and after further consultation with tenants through the normal course of process that application.

In addition to those matters, our client has also agreed to provide two surface easements in the nature of a right-of-way as a condition of site plan approval pursuant to s. 114 of the *CoT Act*. These easements will be granted for nominal consideration (\$1.00) and will secure pedestrian and bicycle (but not vehicular) access over:

1. A strip of land at the north portion of the Subject Lands adjacent to the driveway/walkway generally located across the southerly extent of the lands to the immediate north (391 Sherbourne Street) for the entire extent of the Subject Lands; and
2. A strip of land extending from the rear of the building contemplated by the Revised Proposal to Bleecker Street at the rear of the Subject Lands.

The Instruments

Enclosed with this letter is a copy of the proposed draft Zoning By-law Amendments were also circulated to the City's Community Planning Staff with the May 12th circulation.

We also understand staff may have additional comments on these instruments and the City's Chief Planner, Chief Building Official and City Solicitor may recommend further revisions to same to ensure the Revised Proposal shall be permitted by the zoning by-law amendment.

As referenced above, if Council for the City accepts this offer at its meeting commencing July 20th, 2023, we will proceed to the Tribunal on the basis of the Revised Proposal as identified in the above-referenced drawings and this letter. It would also be understood that NJS and City would take reasonable efforts to work together and finalize the draft zoning by-law amendments to reflect the foregoing prior to the appearance before the Tribunal on August 9, 2023, failing which the parties will jointly request that the Tribunal withhold its final order until the form of the instrument is to the satisfaction of the City.

For greater clarity, our client will jointly attend the Tribunal seeking an interim order approving the Revised Proposal in principle but with the Tribunal withholding any final order on the Zoning By-law Amendment until:

- a) the final form and content of the draft Zoning By-laws are to the satisfaction of the City Solicitor and the Chief Planner and Executive Director, City Planning;



- b) the Applicant has provided confirmation of water, sanitary and stormwater capacity to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services, or the Chief Engineer and Executive Director, Engineering and Construction Services has determined that holding provisions are required in the Zoning By-law amendment and that the final form of Zoning By-law Amendments includes same;
- c) City Council has approved the Rental Housing Demolition application 21 189637 STE 13 RH under Chapter 667 of the Toronto Municipal Code pursuant to Section 111 of the *CoT Act* to permit the renovation and improvements to the rental units at 383 Sherbourne Street and the demolition of the untenanted rental dwelling units at 387 Sherbourne Street, and the and the owner has entered into, and registered on title to the lands, one or more agreements with the City, to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor, securing all rental housing-related matters necessary to implement City Council's decision;
- d) the owner has provided a detailed final Conservation Plan, prepared by a qualified heritage consultant to the satisfaction of the Senior Manager, Heritage Planning, Urban Design, City Planning; and
- e) the owner has entered into a Heritage Easement Agreement with the City for the property at 383 and 387 Sherbourne Street to the satisfaction of the Senior Manager, Heritage Planning including registration of such agreement to the satisfaction of the City Solicitor.

Should you have *any* questions related to the settlement proposal contemplated by this letter, please do not hesitate to contact me directly. I look forward to hearing from you with positive news on this subject.

Yours very truly,

LOOPSTRA NIXON LLP

Per:

Aaron I. Platt

AIP
Encl.
CC: Eldon Theodore, MHBC
Client