



Eileen P.K. Costello  
Direct: 416.865.4740  
E-mail: [ecostello@airdberlis.com](mailto:ecostello@airdberlis.com)

June 4, 2024

**WITHOUT PREJUDICE**

Matter No. 139017

**BY EMAIL:** [Daniel.Elmadany@toronto.ca](mailto:Daniel.Elmadany@toronto.ca)

Daniel Elmadany  
Planning and Administrative Tribunal Law  
City of Toronto Legal Services Division  
55 John Street  
26<sup>th</sup> Floor, Metro Hall  
Toronto ON M5V 3C6

Dear Mr. Elmadany:

**Re: 778 -788 King Street West  
Appeal to OLT of Zoning By-law Amendment Application  
OLT -22-003256**

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As you are aware, we are counsel for BJI Properties Inc., the owner of 782-784 King Street West, Bel-Uniforms Building Inc., the owner of 778 King Street West and 788 King West Inc., the owner of 788 King Street West (collectively, our “**Clients**”). Together, these lands comprise a 2,127 square metre site located on the north side of King Street West, and midblock between Niagara Street to the west and Tecumseth Street to the east (the “**Subject Property**”).

### **Background**

In November 2021, on behalf of our Clients, we filed an application for a Zoning By-law Amendment to facilitate a mixed-use development on the Subject Property (the “**Original Application**”). The City deemed the Original Application complete on November 17, 2021. On April 4, 2022, our Clients then appealed the City’s failure to make a decision on the Application (the “**Appeal**”).

Despite having appealed the Original Application, our Client has continued to work cooperatively with City Staff in order to arrive at a resolution. Our Client’s consultants have regularly met with various departments at the City, and have produced multiple iterations of the proposal, working cooperatively with City staff in concerted effort to settle the Appeal.

Our Client has also submitted an application to alter the heritage property at 778 King Street West under Section 33 of the Ontario Heritage Act and an application to demolish certain identified heritage attributes under Section 34(1)1 of the Ontario Heritage Act (“**OHA Permit Applications**”), which we understand will be considered by City Council in a separate report at the same meeting of Council with the report on this Without Prejudice Settlement Offer. These permit applications will be supported by a revised Heritage Impact Assessment prepared by ERA Architects, dated April 24, 2024.

## **Settlement Proposal**

We are writing to provide a **without prejudice** full and final settlement offer to resolve the Appeal (the “**Settlement Proposal**”), which offers additional modifications which we understand will be considered with the OHA Permit Applications, both of which have been arrived at in response to comments from City staff.

The Settlement Proposal will provide for the redevelopment of the Subject Property with a 20-storey mixed use building (plus a mechanical penthouse and amenity space) with a total gross floor area of 29,252 square metres comprised of a maximum of 28,417 square metres of residential gross floor area and a minimum of 957 square metres of non-residential gross floor area.

Non-residential commercial and retail uses are proposed along King Street West to animate the public realm. A residential lobby entrance is also located along King Street. Approximately 484 residential units, in a range of unit sizes, with a minimum of 10% three bedroom dwelling units, and a minimum of 15% two bedroom dwelling units. Interior amenity space is located on the 2<sup>nd</sup>, 3<sup>rd</sup> and 20<sup>th</sup> floors with adjacent outdoor amenity space on the 3<sup>rd</sup> and 20<sup>th</sup> floors.

Vehicular Access to the development is taken from the rear along Lane N King W Tecumseth. A widening of approximately 1.5 metres of the existing laneway will also be identified and secured to support the new mixed use development on the Subject Lands.

The Settlement Proposal is supported by the enclosed architectural plans prepared by architectsAlliance dated **May 8, 2024** and illustrates the following modifications to the Original Application:

- The demolition of the building at 778 King Street is no longer proposed and instead. The principal (south) façade will be conserved and rehabilitated *in-situ*, and a portion of the return (east and west) elevations will be reconstructed as generally described in the revised Heritage Impact Assessment prepared by ERA Architects, dated April 24, 2024. Certain aspects of the heritage property are proposed to be altered and reconstructed and demolition of certain heritage attributes are also requested through the OHA Permit Applications;
- The cantilever soffit above the heritage building will be clad in a black panel or similar toned soffit panel to provide a simple planer backdrop above the original heritage masonry façade, satisfactory to Heritage Planning to distinguish the new addition from the existing heritage building;
- In consultation with Heritage Planning Staff, new windows are proposed to be introduced into the heritage elevation and will be designed to appear to have segmented panels;
- OHA Permit Applications have been filed and we understand are proceeding to the same meeting of Council as this Without Prejudice Settlement Offer;
- All east and west facing windows will be secondary windows with the primary living space of the units facing either north or south;
- Additional stepbacks provided along the East, West, North and South elevations of the development as generally depicted in the enclosed architectural plans prepared by architectsAlliance dated **May 8, 2024**;
- No balconies are proposed from Levels 1 to 14 on all elevations; and balconies are proposed starting on Level 15 for certain elevations.

- Vehicular Access and below-grade garage access for the development has been removed from King Street West and now proposed off the laneway to the rear of the Subject Lands;
- Increase in non-residential uses at-grade along King Street West;
- An increase in indoor amenity space, provided at a rate of 1.97 square metres per residential unit (970 square metres total);
- An increase in outdoor amenity space, provided at a rate of 0.96 square metres per residential unit (473 square metres total).

In our submission, the Settlement Proposal results in an enhanced heritage conservation strategy, together with the built form revisions reflected in the updated architectural plans to provide a pedestrian-scaled base building which conserves the cultural heritage value of the designated property at 778 King Street West on the Subject Lands and is appropriate for the existing and planned context of this part of the King Street West.

### **Appeal of City's Designation By-law 945-2022 regarding 778 King Street West**

The approval of the OHA Permit Applications will resolve our Clients' appeal of the original designating by-law for the property at 778 King Street West and our Clients agree to withdraw the previously filed appeal in OLT- 22-004256 upon confirmation by the City Solicitor of the approval by Council of the OHA Permit Applications and prior to any attendance at the Ontario Land Tribunal regarding the settlement of the Appeal.

### **Conditions to the Issuance of the Final Order on Zoning By-law Amendment**

Should City Council accept the without prejudice settlement offer, our Client is also agreeable to the OLT's final Order on the Zoning By-law Amendment be withheld subject to the City Solicitor advising that the following conditions have been satisfied:

- (1) the final form and content of the draft Zoning By-law Amendment is satisfactory to the Interim Chief Planner and Executive Director, City Planning and the City Solicitor;
- (2) the Owner has, at its sole cost and expense:
  - a. submitted a revised Functional Servicing Report and Stormwater Management Report, Hydrogeological Review, including the Foundation Drainage Report ("Engineering Reports") to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services, in consultation with the General Manager, Toronto Water;
  - b. secured the design and provision of financial securities in respect of any upgrades or required improvements to the existing municipal infrastructure identified in the accepted Engineering Reports, to support the development, all to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager, Toronto Water, should it be determined that improvements or upgrades are required to support the development, according to the accepted Engineering Reports, accepted by the Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager, Toronto Water;
  - c. ensured that implementation of the accepted Engineering Reports does not require changes to the proposed amending By-laws or that any required changes have

been made to the proposed amending By-laws to the satisfaction of the Interim Chief Planner and Executive Director, City Planning and the City Solicitor, including the use of a Holding ("H") By-law symbol regarding any new municipal servicing infrastructure or upgrades to existing municipal servicing infrastructure, as may be required; and

- d. submitted an updated Transportation Impact Study or Addendum to reflect revisions to site circulation, loading, parking and access for the development, to the satisfaction of the General Manager, Transportation Services.
- (3) the Owner has provided a detailed Conservation Plan prepared by a qualified heritage consultant that is substantially in accordance with the conservation strategy set out in the Heritage Impact Assessment for 778 King Street West, prepared by ERA Architects Inc., dated April 25, 2024, to the satisfaction of the Senior Manager, Heritage Planning; and
- (4) the Owner has entered into a Heritage Easement Agreement with the City for the property at 778 King Street West substantially in accordance with plans and drawings prepared by architectsAlliance dated May 8, 2024 and the Heritage Impact Assessment prepared by ERA Architects Inc., dated April 25, 2024, subject to and in accordance with the approved Conservation Plan required above, to the satisfaction of the Senior Manager, Heritage Planning including execution of such agreement to the satisfaction of the City Solicitor.

Given the lapse of time from the Original Application and the revised proposal depicted in the Without Prejudice Settlement Offer, our Client will also make a complete resubmission to the City to ensure all other reports, plans and drawings are appropriately updated to reflect the revised proposal, should it be accepted by City Council.

Should City Council accept the without prejudice settlement offer, we would request that the City Solicitor be directed to support the revised proposal before the Ontario Land Tribunal at the earliest reasonable opportunity and based on evidence satisfactory to both the City and the Client. Our Client will work expeditiously with City staff to finalize the above noted conditions, including the draft Zoning By-law Amendment to facilitate the development of the Subject Lands.

## **Conclusion**

In support of the Without Prejudice Settlement Offer, please find enclosed the architectural plans prepared by architectsAlliance dated May 8, 2024.

This Without Prejudice Settlement Offer will remain open until the end of the City Council meeting scheduled to commence on June 26, 2024, unless otherwise indicated, at which point it should be considered as withdrawn if not accepted by City Council. If City Council accepts the Settlement Offer, our client consents to the release of this Settlement Offer, including all enclosures.

We also understand that the OHA Permit Applications will be presented to the Toronto Preservation Board at its meeting commencing **June 5, 2024**, which will form the basis of a separate report to City Council scheduled to commence on June 26, 2024.

Should you have any further questions, or require clarification with respect to the above or attached materials, please do not hesitate to contact the undersigned.

Yours truly,

AIRD & BERLIS LLP



Eileen P.K. Costello  
EPKC:MH:nh

cc Client

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