

TORONTO STAFF REPORT

May 18, 2004

To: Toronto and East York Community Council

From: Director, Community Planning, South District

Subject: Final Report
Application to amend the Official Plan and Draft Plan of Condominium
North Avenue Road Corporation Limited
03 202397 SMI 22 OZ and 03-202405 SMI 22 CD
Patrick J. Devine, Goodman And Carr
1 Benvenuto Pl
Ward 22 - St. Paul's

Purpose:

This report reviews and recommends approval of an application to amend the Official Plan to permit the conversion of a residential apartment building at 1 Benvenuto Place to condominium, and recommends approval of a Draft Plan of Condominium for the property, subject to conditions.

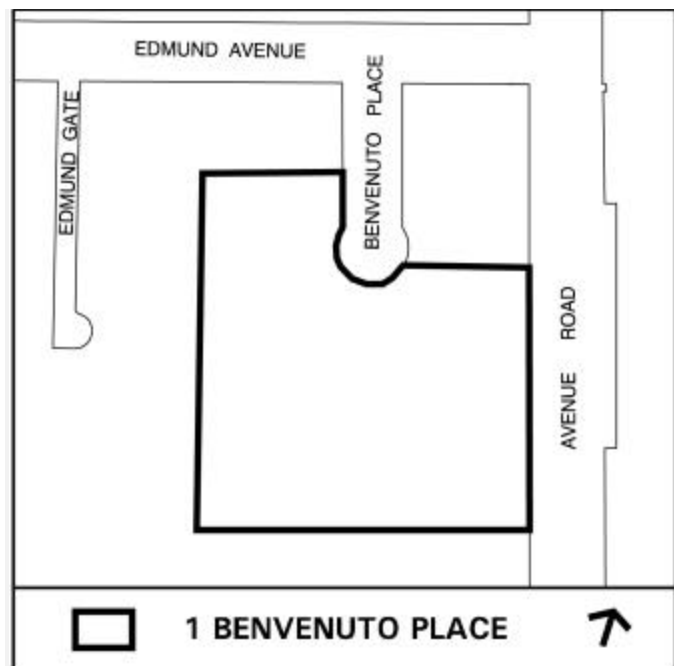
Financial Implications and Impact Statement:

Recommendations:

There are no financial implications resulting from the adoption of this report.

It is recommended that City Council:

- (1) amend the Official Plan for the former City of Toronto substantially in accordance with the draft Official Plan Amendment attached as Attachment No. 4
- (2) amend the new City of Toronto Official Plan substantially in accordance with the draft Official Plan Amendment attached as Attachment No. 5



- (3) authorize the City Solicitor to make such stylistic and technical changes to the draft Official Plan Amendments as may be required;
- (4) authorize Draft Approval of the Plan of Condominium for 1 Benvenuto Place, stamp dated as received on 23 December, 2003 and that the Chief Planner is authorised to permit any red line revisions as deemed appropriate;
- (5) require the owner to fulfil the following conditions of Draft Approval of the Plan of Condominium, including the execution and satisfactory register any condominium agreement deemed necessary by the City Solicitor, prior to the City's consent for final registration and authorize the City Solicitor to prepare any necessary condominium agreement to secure the conditions, as the City Solicitor deems necessary:
 - A. The plan of condominium (declaration and description) shall be registered within 3 years from the date that Council approves this Draft Plan of Condominium, otherwise the approval shall lapse and be of no further force and effect.
 - B. Comprehensive Reserve Study:
 - (1) The declarant shall, at its own expense, carry out and complete a comprehensive reserve fund study, as defined in s. 27 of O. Reg. 48/01 made under the Condominium Act, 1998 as a "comprehensive study", prior to registration of the plan of condominium (declaration and description);
 - (2) The comprehensive study required in condition B(1) above shall be carried out in accordance with the requirements of the Condominium Act, 1998 and the regulations made thereunder, provided that the persons conducting the study shall in connection with the physical analysis, be a professional engineer registered as such and holding a certificate of authorization within the meaning of the Professional Engineers Act;
 - (3) In addition to the requirements under the regulations made under the Condominium Act, 1998:
 - (a) the financial analysis component of the comprehensive study shall include a simple, easily read table setting out, by unit type, the recommended average dollar amount of contributions to the reserve fund that will be required to be paid annually per unit to the reserve fund for each year covered by the study (not less than 30 years) based on the reserve fund required to be established by the declarant in accordance with condition D below. The table shall be in the form of the Cash Flow Table forming part of Form 15 of O. Reg. 48/01, as amended from time to time, made under the Condominium Act, 1998;

- (b) the physical analysis component of the comprehensive study shall include in addition to the component inventory and assessment of each item within the component inventory, a detailed list of:
 - (i) the repairs and components to be replaced as a result of outstanding work orders issued by the City of Toronto;
 - (ii) the repairs and components to be replaced in order to bring the building into compliance with c. 629, Property Standards, of the City of Toronto Municipal Code; and
 - (iii) any other repairs and components to be replaced which in the opinion of the consultant(s) carrying out such study should be completed by the declarant prior to registration of the plan of condominium (declaration and description) against the lands; and
- (c) in addition to their signatures, the persons conducting the comprehensive study in respect of the property shall include the following statement in the study:

“Notwithstanding that our fee for this study will be paid by the Declarant, we have prepared this study for the Declarant and the Condominium Corporation which will be created upon registration of the plan of condominium (the “Condominium Corporation”) and we acknowledge that this study will be turned over to the Board of Directors of the Condominium Corporation and they can rely upon this study and the opinions and findings expressed herein, and consent and agree to such reliance.”

- C. The declarant shall, prior to registration of the plan of condominium (declaration and description), at its own expense:
 - (1) complete each of the repairs and replace each of the components set out on the lists compiled pursuant to conditions B(3)(b)(i), (ii) and (iii) above as detailed in the comprehensive study; and
 - (2) provide to the City of Toronto’s Commissioner of Urban Development Services (“the Commissioner”) a certificate from the persons carrying out the study confirming all of the repairs and replacements set out on the lists compiled pursuant to conditions B(3)(b)(i), (ii) and (iii) have been satisfactorily completed.
- D. The declarant shall, prior to registration of the plan of condominium (declaration and description), at its own expense, establish a reserve fund for the benefit of

the condominium corporation to be created in an amount not less than the greater of:

- (1) the amount, if any, recommended in the comprehensive study required in condition B above; and
 - (2) the amount required pursuant to the Condominium Act, 1998, if any.
- E. The declarant shall provide a copy of the comprehensive study required in condition B(1) above, including the matters required in condition B(3) above, to the Commissioner prior to the registration of the plan of condominium (declaration and description).
- F. The declarant shall, prior to the registration of the plan of condominium (declaration and description) provide its solicitors confirmation that the disclosure statement required to be delivered to every person who purchases a unit or a proposed unit pursuant to Section 72 of the Condominium Act, 1998, did in addition to the matters specified in such Act:
- (1) include a copy of the table required to be prepared in condition B(3) (a) above as updated and signed by the person who carried out the financial analysis component of the comprehensive study required in condition B(1) to:
 - (a) reflect the actual reserve fund established by the declarant pursuant to condition D above;
 - (b) describe the repairs/renovation work that must be completed by the declarant as a condition of registration; and
 - (c) take into account all repairs and renovations completed by the declarant which are set out on the lists compiled pursuant to conditions B(3)(b)(i), (ii) and (iii) above as detailed in the comprehensive study; and
 - (2) that such updated table be included in the statement required in condition B(3)(c) above.
- G. Upon presentation to the Commissioner of a certificate from a professional engineer registered as such and holding a certificate of authorization within the meaning of the Professional Engineers Act stating that Conditions A, D, E and F have been satisfied and provided Conditions A, E and I, have been satisfied, the plan may be registered.

- H. The condominium declaration shall clearly identify and explain the nature of any short-term residential uses permitted in the condominium, to the satisfaction of the Commissioner of Urban Development Services.
- I. The declarant shall provide a tax certificate, which confirms that all municipal taxes have been paid in full.
- J. The declarant agrees not to pass on, in the form of rent increases to existing tenants, any costs associated with the extensive renovations or alterations of the building identified in this application.
- K. Prior to the final approval of the Plan of Condominium, the Declarant be required to enter into and register on title a Heritage Easement Agreement under Section 37 of the Ontario Heritage Act with the City to provide for the permanent protection of Benvenuto Place Apartments and in a form satisfactory to the City Solicitor in consultation with the manager of Heritage and Preservation Services.
- L. That authority be granted for the introduction of any necessary Bills in Council to give effect to the Heritage Easement Agreement.
- M. Prior to the issuance of any building permit, final plans for alterations to this building be to the satisfaction of the Manager of Heritage Preservation.

Background:

Proposal

The applicant proposes to amend the Official Plan and approve a Draft Plan of Condominium to permit conversion of the existing 116-unit rental residential apartment building at 1 Benvenuto Place to a residential condominium. The effect of the application would be that individual apartment units could be sold to the current tenants or to other purchasers. The applicant advises it intends to sell the condominium units and the building would cease to operate as a rental apartment building.

The draft plan of condominium proposes 125 dwelling units, by subdividing and reconfiguring the restaurant space and some of the existing 116 units. There are some suites that are currently three (3) bedroom units that would, with the renovations, become a combination of two (2) bedroom and one (1) bedroom suites.

The applicant is also proposing to make extensive renovations as a result of the proposed condominium conversion. These proposed alterations would include the following:

1. Complete renovation of the lobby to luxury standards;
2. Renovation of all common area hallways to luxury standards;
3. Replacement of all elevators with state of the art mechanical and new cabs;

4. Extension of central air conditioning to all suites;
5. In-suite laundry hook-ups;
6. Creation of a fitness facility and common amenity rooms at ground floor;
7. Restoration of the parking garage;
8. Upgrades of suites, on turnover, to luxury condominium standards; and
9. Installation of new locker facilities for all residents.

The applicant has also indicated that they do not propose to construct any new additions or major exterior alterations to the existing building.

Site Description

The site is located west of Avenue Road and south of Edmund Avenue. The subject property is located at the end of a cul-de-sac municipally known as 1 Benvenuto Place. The property accommodates a seven storey rental apartment building and includes a restaurant in the basement. The southern portion of the site is connected to a Natural Area that extends from Bayview Avenue to Caledonia Road as identified in the former City of Toronto Official Plan. This portion of the site heavily planted and slopes dramatically south towards Poplar Plains Crescent.

The current breakdown of the existing residential units are as follows: twelve bachelor units, twenty 1-bedroom units, fifty-one 2-bedroom units and thirty-three 3-bedroom units.

The surrounding land uses include the following:

North: 4-storey apartment building and several 2-3 storey single family residential dwellings located on the north side of Edmund Avenue, three 5-storey apartment buildings fronting on Avenue Road and a 7-storey apartment building fronting on Edmund Avenue;

South: two 4-storey apartment buildings fronting on Avenue Road and several 2-3 storey single family dwellings fronting on Poplar Plains Crescent;

East: east side of Avenue Road is the Brothers of The Christian School;

West: several 2/3-storey single detached dwellings fronting on Edmund Gates Drive.

Official Plan Designation

The former City of Toronto Official Plan designates the site as “Low Density Residence Area”. A portion of the site, which abuts Avenue Road, is designated “High Density Residence Area” and the southern portion of the site is designated “Natural Area”.

The Low Density Residence Area designation permits residential buildings having a gross floor area up to 1.0 times the area of the lot. The High Density Residence Area designation permits residential buildings having a gross floor area up to 3.0 times the area of the lot. The

southern portion of the site is located within a Natural Area that is privately owned by the applicant.

At its meeting of November 26-28, 2002, Council adopted the new Official Plan for the City of Toronto. Once the Plan comes into force and effect, it will designate the subject site "Apartment Neighbourhood".

Zoning By-law 438-86

The site is currently zoned R4 Z2.0 which permits a range of residential building types having a maximum gross floor area of 2.0 times the area of the lot (Attachment 2). A maximum height of 10.0 metres is permitted. A rezoning is not required to permit the conversion of the residential apartment building to condominium.

Site Plan Control

The applicant has submitted a site plan application, which has been circulated to appropriate departments and agencies for comments.

Reasons for the Application

Section 9(2) of the Condominium Act provides that Section 51 of the Planning Act applies to an application for conversion. The proposed conversion of 1 Benvenuto Place from a rental apartment building to a residential condominium must be considered under the criteria set forth in Section 51(24) of the Planning Act. One of the criteria of Section 51(24) is whether the application conforms to the official plan.

The proposed conversion of the residential apartment building at 1 Benvenuto Place to condominium does not comply with the in-force and effect policies of the (former) City of Toronto Official Plan or the emerging City policies of the New Official Plan for the City of Toronto. Accordingly, an amendment to both the existing and new Plans will be required if Council approves this conversion application.

Community Consultation

A public meeting was held in the neighbourhood to discuss this proposal on March 23, 2004. Approximately 20 people attended the meeting. Issues that were discussed included planning process and policies regarding condominium conversion. Most of the questions raised by the interested persons at the meeting pertained to the details of the renovations proposed by the applicant such as: on suite laundry, new windows, air-conditioning and landscaping materials on the south end of the building. It appeared that people who attended were in support of the proposed Official Plan Amendment and Draft Plan of Condominium.

Agency Circulation

The applications were circulated to all appropriate agencies and City Departments. Responses received have been used to assist in evaluating the applications.

Heritage Preservation Services have requested that prior to the final approval of the Plan of Condominium, the Owner be required to enter into and register on title a Heritage Easement Agreement under Section 37 of the Ontario Heritage Act with the City to provide for the permanent protection of Benvenuto Place Apartments.

Comments:

Planning Act Criteria

Section 51(24) of the Planning Act sets forth the criteria that the City must consider in determining whether to allow the conversion of a rental residential building to condominium. These criteria include:

- The health, safety, convenience and welfare of the present and future inhabitants of the City;
- The effect of the proposed condominium on matters of provincial interest;
- Whether the proposed condominium is premature or in the public interest; and
- Whether the proposed plan of condominium conforms to the official plan;

Official Plan

The former City of Toronto Official Plan designates the site as “Low Density Residence Area”. A portion of the site, which abuts Avenue Road, is designated “High Density Residence Area” and the southern portion of the site is designated “Natural Area”.

The Low Density Residence Area designation permits residential buildings having a gross floor area up to 1.0 times the area of the lot. The High Density Residence Area designation permits residential buildings having a gross floor area up to 3.0 times the area of the lot. The southern portion of the site is located within a Natural Area that is privately owned by the applicant.

The Natural Area designation permits limited forms of development associated with low impact leisure uses and activities normally associated with private outdoor residential recreation, or natural area management activities. The applicant has indicated that the Natural Area portion of the site will not be affected by the proposed condominium conversion.

Section 6.18 of the former City of Toronto Official Plan is in force and effect. It states that the conversion of any building originally constructed to provide one or more rental apartments, is premature and against the public interest, unless the vacancy rate for private apartments across the City regularly returns to at least 2.5 per cent. The Metropolitan Toronto Official Plan also contains policies encouraging the preservation of existing rental housing.

In April 1999, Council adopted Official Plan Amendment No. 2 (OPA 2) to the former Metropolitan Toronto Official Plan which set out Council's proposed policies for the amalgamated City on the conversion of rental housing to condominium and the demolition of rental housing. OPA 2 was designed to harmonize and update conversion and demolition policies in the official plans of the former municipalities. While the Ontario Court of Appeal has determined that OPA 2 is legal and within the jurisdiction of the City to enact, it has not come into force and to date there has not been a hearing on its planning merits. The housing policies of the new Toronto Official Plan have subsequently been enacted and supersede OPA 2. These policies are the subject of a number of appeals that remain to be resolved.

New Official Plan

At its meeting of November 26-28, 2002, Council adopted the new Official Plan for the City of Toronto. The Minister of Municipal Affairs and Housing approved the new Plan, in part with modifications. The Minister's decision has been appealed in its entirety. The new Official Plan is now before the Ontario Municipal Board. The first pre-hearing on the new Official Plan was held on April 19th and 20th, 2004. The next pre-hearing has been scheduled for September 14th, 2004. Once the Plan comes into force and effect, it will designate the subject site "Apartment Neighbourhood".

The new Official Plan contains a number of policies respecting housing and the need to preserve and increase the City's supply of rental housing. The relevant new Plan policies include Policy 3.2.1.8:

- " The conversion to condominium... of any building or related group of buildings containing six or more rental housing units is premature and not in the public interest unless:
- (a) the rental apartment vacancy rate for the City of Toronto as reported by the Canada Mortgage and Housing Corporation (CMHC), has been at or above 2.5% for the preceding two-year reporting period; or
 - (b) all of the rental housing units have rents that exceed mid-range rents at the time of the application."

As with Section 6.18 of the former City of Toronto Official Plan, the above-noted policy of the new Toronto Plan requires that the rental vacancy rate remain at least 2.5% for a period of time, before conversion would be considered. Under the new Toronto Plan this requires that the vacancy rate be at or above this threshold for three consecutive CMHC annual surveys. The first time the vacancy rate for the City of Toronto exceeded the identified threshold was in October 2003. Even should the vacancy rate remain above this threshold during the next two annual surveys, the City is still required to consider the appropriateness of the conversion application under the other criteria of Section 51(24) of the Planning Act.

The above criterion (b) of the new Toronto Official Plan does provide an exception for buildings where all unit rents are above the mid-range amount. To qualify for this exception,

all rents in the building at the date of application must be equal to, or exceed, one and one-half times the average City of Toronto rent, by unit type, as reported annually by CMHC. According to the information provided by the applicant, 4 bachelor units of the total 116 units have rents below this threshold. The current threshold is \$1,100 per month based on CMHC's October 2003 survey.

A small number of the units have mid-range rents. As such, the condominium conversion for 1 Benvenuto Place does not comply with Policy 3.2.1.8 in the new Official Plan and would therefore require an Official Plan Amendment to the new Official Plan.

Although the new Official Plan is not in force and effect, its policies are a relevant consideration. It represents Council's current position about the importance of preserving the existing supply of rental housing as well as the most recent staff recommendations with respect to conversion of rental housing to condominium.

Draft Plan of Condominium

As mentioned earlier, Section 51(24) of the Planning Act sets forth matters to consider when reviewing an application for draft plan of condominium, including: the health, safety, convenience, accessibility, and welfare of present and future inhabitants of the City; conformity to the Official Plan; whether the proposed subdivision is premature or in the public interest; and matters of provincial interest, including the adequate provision of a full range of housing. Staff are satisfied that the proposal meets the objectives of these considerations, as the rents for all units, with only a very few exceptions, are in the high-end range. Therefore, there will be no affordable rental housing lost very few mid-range rental units lost. As well, the owner has provided his assurance that the rents for the existing rental units will not be increased as a result of the extensive renovations and alterations associated with converting and upgrading the building. Also, as stated below, the security of tenure for the sitting tenants will be protected.

The owner, too, has demonstrated his willingness to ensure this historical structure will be preserved, and has agreed to enter into a Heritage Easement Agreement with the City.

Security of Tenure

The conversion, if permitted, would not impact on the security of the tenure of existing tenants. Under the Tenant Protection Act (TPA), where a rental unit is converted to condominium, tenants who occupy a unit at the time of conversion cannot be evicted on the basis that the owner of the unit requires personal use of the unit for themselves or a member of their family. After the sitting tenant vacates the unit, however, any future tenant can be evicted on the basis of personal use.

In addition, if the owner receives an acceptable offer to purchase the unit, the sitting tenant has 72 hours to match the offer, and if they do so, the landlord must accept the tenant's offer. (This does not apply if more than one unit is being purchased as part of the same offer). Tenants can not be evicted if they decide not to purchase the unit.

Property Taxes

Due to shifts in tax rates and assessed value resulting from the conversion to condominium property taxes payable on the property may change, and those changes – whether increased or decreased – may be passed on to tenants. For new tenants there is no obligation of the owner to pass on tax decreases.

Building Condition Report

Under Section 9(4) of the Condominium Act, the City may require a report prepared by a qualified professional to determine deficiencies with respect to building maintenance or other matters of concern. The City has no outstanding work orders against the property at 1 Benvenuto Place, and no concerns have been raised with respect to whether the building meets the City's property standards.

As the building is not new, I am recommending certain draft plan of condominium conditions which are primarily directed at enabling first purchasers of the units, prior to finalizing their purchase, to have a timely and meaningful disclosure of the physical condition of the property and the implications of such condition for the reserve fund and future common expenses. These conditions reinforce the requirements for disclosure under the Condominium Act.

Conclusions:

Based on the high rents associated with almost all of the units in this building, I am recommending that City Council approve Official Plan amendments to permit the 116-unit residential apartment building at 1 Benvenuto Place to convert to condominium. Approval of the Draft Plan of Condominium is also recommended subject to specific conditions, including the completion of a comprehensive reserve study, and the establishment of a reserve fund.

Contact:

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Ted Tyndorf
Director, Community Planning, South District

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List of Attachments:

Attachment 1: Application Data Sheet
Attachment 2: Zoning
Attachment 3: Official Plan
Attachment 4: Draft Official Plan Amendment
Attachment 5: Draft New Official Plan Amendment

Attachment 1:

APPLICATION DATA SHEET

Application Type Official Plan Amendment Application Number: 03 202397 SMI 22 OZ
Details OPA, Standard Application Date: December 23, 2003

Municipal Address: 1 BENVENUTO PL, Toronto ON
Location Description: PL M506 PT LTS 1 & 4 **GRID S2210
Project Description: Proposed condominium conversion. Submitted in conjunction with a Draft Plan of
Condominium application. Circulated concurrently. Note covering letter.

Applicant:	Agent:	Architect:	Owner:
GOODMAN AND CARR PATRICK J. DEVINE			NORTH AVENUE ROAD CORPORATION LIMITED

PLANNING CONTROLS

Official Plan Designation:		Site Specific Provision:	
Zoning:	R4 Z2.0	Historical Status:	Y
Height Limit (m):	0	Site Plan Control Area:	Y

PROJECT INFORMATION

Site Area (sq. m):	11270	Height: Storeys:	7
Frontage (m):	89.19	Metres:	23.34
Depth (m):	111.87		
Ground Floor GFA (sq. m):	2675.42		Total
Residential GFA (sq. m):	21008	Parking Spaces:	0
Non-Residential GFA (sq. m):	0	Loading Docks	0
Total GFA (sq. m):	21008		
Lot Coverage Ratio (%):	23.7		
Floor Space Index:	1.86		

DWELLING UNITS

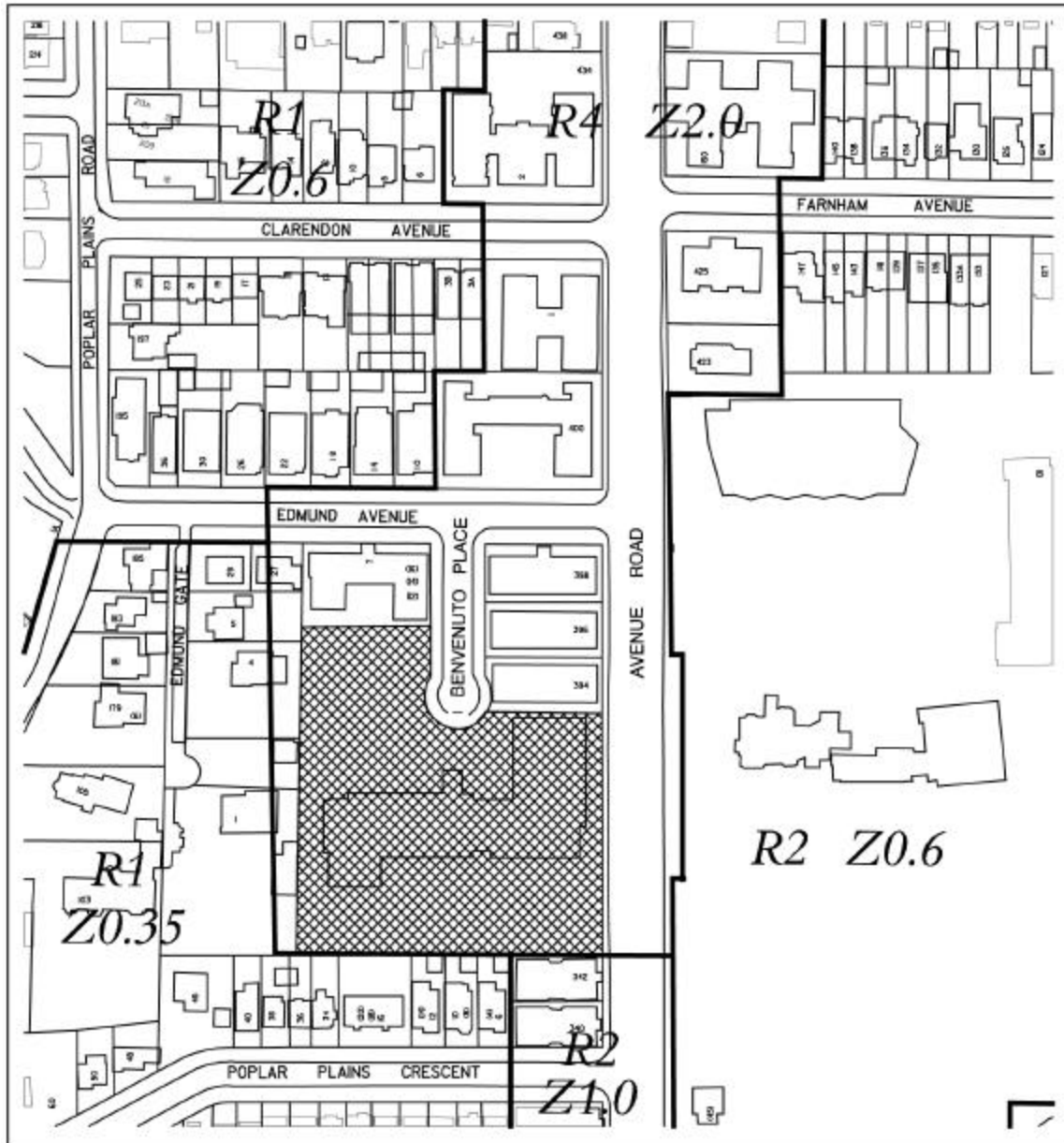
Tenure Type:	Condo
Rooms:	0
Bachelor:	12
1 Bedroom:	27
2 Bedroom:	58
3 + Bedroom:	26
Total Units:	123

FLOOR AREA BREAKDOWN

	Above Grade	Below Grade
Residential GFA (sq. m):	21008	0
Retail GFA (sq. m):	0	0
Office GFA (sq. m):	0	0
Industrial GFA (sq. m):	0	0
Institutional/Other GFA (sq. m):	0	0

CONTACT:	PLANNER NAME:	Steve Daniels, Planner
	TELEPHONE:	(416) 394-2608

Attachment 2: Zoning (Map)



 **Toronto** Urban Development Services
Zoning

1 Benvenuto Place

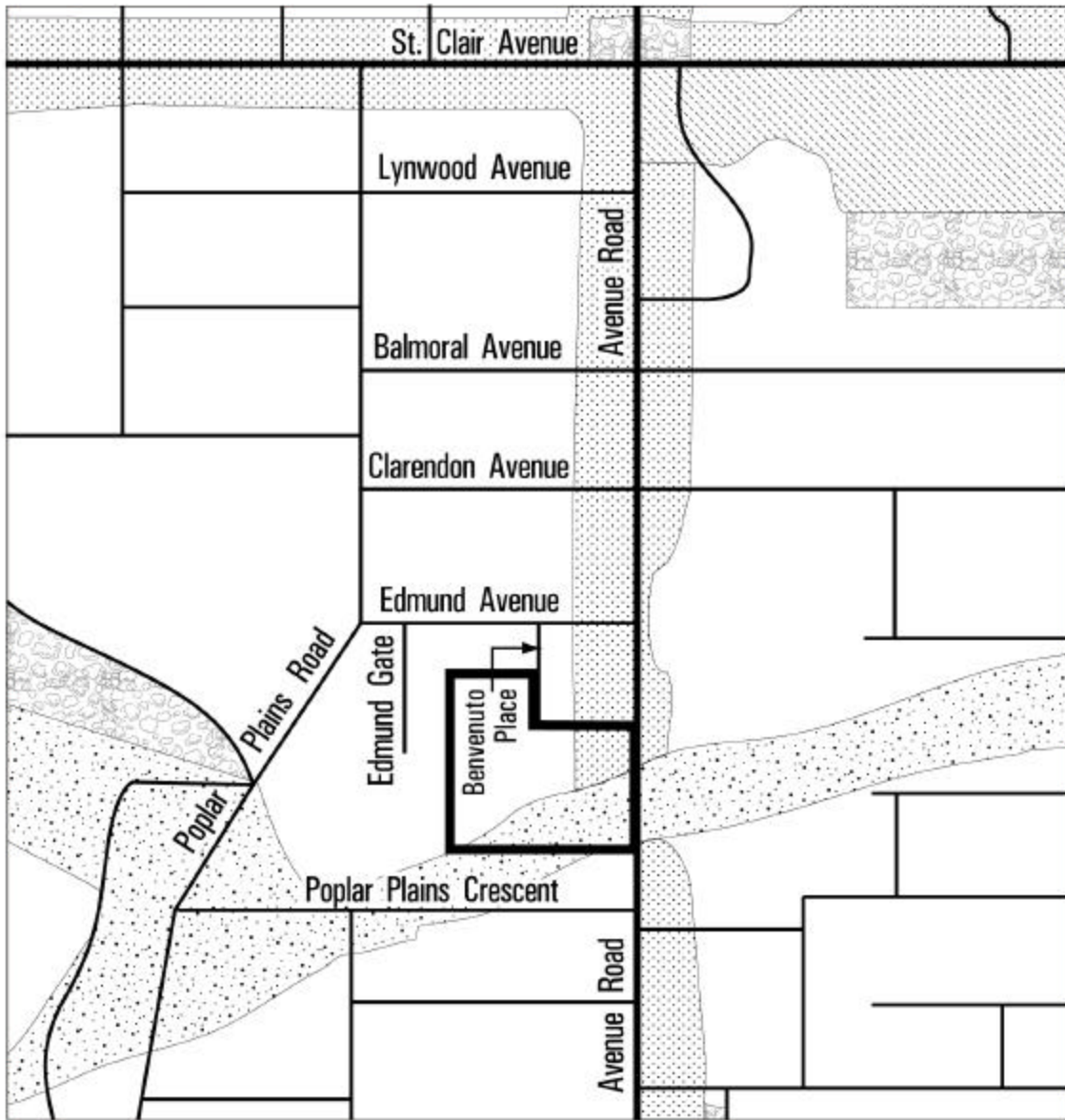
File # 03_202397

- R1 Residential District
- R2 Residential District
- R4 Residential District



Not to Scale
Zoning By-law 438-86 as amended
Extracted 01/22/04 - NRS

Attachment 3: Official Plan (Map)



 **TORONTO** Urban Development Services
Official Plan

1 Benvenuto Place

File # 03_202397

- | | |
|--|---|
|  Site |  High Density Mixed Commercial-Residential Areas 'A' |
|  Low Density Residence Areas |  Open Space |
|  High Density Residence Areas |  Natural Areas |


Not to Scale
01/22/04

Attachment 4: Official Plan (Text)

Draft Official Plan Amendment

Authority: Toronto South Community Council Report No. ###, Clause No. ###, as adopted by City of Toronto Council on #####, 2004

Enacted By Council:

CITY OF TORONTO

Bill No.

BY-LAW No. ###-2003

To adopt an amendment to the Official Plan for the former City of Toronto respecting lands known as 1 Benvenuto Place

WHEREAS the Council of the City of Toronto has had application made to it for a proposed Official Plan Amendment respecting 1 Benvenuto Place;

AND WHEREAS the Council of the City of Toronto conducted a public meeting under Section 17 of the Planning Act, R.S.O., c.P13 regarding the proposed Official Plan Amendment.

The Council of the City of Toronto HEREBY ENACTS as follows:

1. The text and map annexed hereto as Schedule "A" are hereby adopted as an amendment to the Official Plan for the former City of Toronto.
2. This Official Plan Amendment No. #####.

ENACTED AND PASSED this ### day of #####, A.D., 2004.

Mayor

City Clerk

Schedule "A"

1. Section 18 of the Official Plan for the former City of Toronto is amended by adding a new section 18.###, as follows:

- (1) "18.### Lands known as 1 Benvenuto Place".

Notwithstanding any other provisions of this Plan, Council may pass by-laws applicable to the lands shown on Map 18.### to permit the conversion to condominium of the residential apartment building consisting of 116 residential units existing on those lands June ###, 2004, provided the condominium is registered within three years after the enactment and passing of Bills at Council.

Attachment 5: New Draft Official Plan Amendment

Draft New Official Plan Amendment

Chapter 7 of the City of Toronto Official Plan, entitled Site and Area Specific Policies, is amended by adding a new Section ### as follows:

#####. 1 Benvenuto Place

Conversion to condominium of an existing apartment building consisting of 116 residential units as of June ## 2004, is permitted, provided the condominium is registered within three years of the enactment and passing of Bills at Council.