

Issuance of Partial Occupancy Permit – 109 Front Street East (Downtown)

The Toronto Community Council recommends the adoption of the following report (September 18, 2000) from the Commissioner of Urban Development Services:

Purpose:

I wish to report to Toronto City Council that I have issued a partial occupancy permit for the subject property although the pedestrian bridge across Lower Sherbourne is not constructed and is not in use per a requirement of the Zoning By-law.

Financial Implications and Impact Statement:

Not applicable.

Recommendations:

That Toronto City Council endorse my issuance of a partial occupancy permit contrary to the Site Specific Zoning By-law requirements and Section 37 agreement requiring that the bridge connecting to the St Lawrence Market be constructed and be in use prior to the occupancy of the building except for model suites subject to the following conditions:

- (a) That the cost of the bridge construction be tendered and the projected date of the bridge construction be established and that the letter of credit will be retained for the purpose of securing this construction until the bridge construction is complete; and
- (b) the Commissioner of Urban Development Services reserves the right to enforce the Zoning By-law at a later date, should the developer be remiss in constructing the pedestrian bridge in a timely fashion, when the necessary approvals are in place.

Background:

In February 1997, City Council agreed to a settlement of major litigation between the City and the owners of 109 Front Street East, Camrost. The City and Camrost had been disputing whether it was necessary to provide public parking for St. Lawrence Market in accordance with a 1990 site specific By-law which required 419 public parking spaces. The settlement included two key components: the provision of a 205 space public parking garage on the site, and the construction of a pedestrian bridge connecting the public parking to the podium level of the Market. The settlement and subsequent by-laws and agreements require that both the public parking and the bridge be in operation prior to the occupancy of the last phase of the development located along the east side of Jarvis Street just south of Front Street East. The initial occupancy of the Jarvis Street building is nearing, and while the public parking is now in operation, the pedestrian bridge is not under construction. The City's approval of the bridge design along with the necessary

legal agreement and permits is nearing completion. However, the bridge construction will not be tendered or completed prior to the initial occupancy of the last Phase of the development, as required in the site specific By-law and related agreements.

Comments:

Zoning By-law 273-1998 for this site was passed on May 1, 1998, which contemplated that the construction of the building parking garage and pedestrian bridge would occur concurrently. The guarantee that this would occur was built into the site-specific zoning by-law and Section 37 agreement by way of conditions requiring,

- a) the building permit could not be issued until the permit application and design drawings for the pedestrian bridge had been submitted. The condition was met; and,
- b) that occupancy of the building would not be permitted until the bridge had been constructed and was in use. This condition has not been met.

One of the reasons this bridge design could not be assessed by Works and Emergency Services was as a result of having determined that a roadway re-alignment and reconstruction was necessary. This determination was not made, however, until after the zoning by-law had been passed and in too short a time to permit the roadway redesign work to be completed and then to evaluate the design of the pedestrian bridge.

It became clear recently that the construction and occupancy of parts of the building would be complete before the construction of the pedestrian bridge can reasonably be expected to be completed.

Notwithstanding the above, however, all other requirements of the zoning by-law and development agreement as required for building occupancy have been complied with or have been secured by way of a letter of credit, including the pedestrian bridge. Also, parking levels P1 and P2 are completed and in use.

In my opinion, it would be unreasonable to withhold partial occupancy of this building, thereby preventing purchasers from moving into their new homes, under these circumstances. The developer's obligation for the cost of constructing the pedestrian bridge has been secured by way of a letter of credit (with the exception of the additional Construction Price Index increased value over the past three years).

I am recommending, however, that your Council adopt a recommendation which specifically cites the Municipalities prerogative to enforce its zoning by-law provisions at any later date, should it view that the developer has been remiss in constructing the pedestrian bridge in a timely fashion, when the necessary approvals are in place.

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