



**STAFF REPORT
ACTION REQUIRED**

**18 Lower Jarvis Street (also known as 1 Market Street) -
Construction and Maintenance of a Condominium Sales
Centre**

Date:	April 7, 2008
To:	Toronto and East York Community Council
From:	Director, Transportation Services Toronto and East York District
Wards:	Toronto Centre-Rosedale – Ward 28
Reference Number:	Te08021te.row

SUMMARY

Transportation Services is in receipt of a request from the developer of 18 Lower Jarvis Street, also known as 1 Market Street, to allow for the construction and maintenance of a sales centre measuring approximately 46 m in length and 6.4 m in width (294.4 m²), which will encumber the public right of way on the Market Street flank of 18 Lower Jarvis Street. The sales centre will be used in connection with a proposed mixed-use condominium building to be built at 18 Lower Jarvis Street.

We have reviewed the proposal and do not recommend approval since it is a large structure, used solely for commercial purposes, and will encumber the public right of way for an extended period of time. Furthermore, the proposal does not meet the requirements of the former City of Toronto Municipal Code Chapter 313, Streets and Sidewalks, pertaining to allowable encroachments within the public right of way and would set an undesirable precedent for future similar requests by developers.

RECOMMENDATIONS

Transportation Services recommends that City Council:

1. deny the request for the construction and maintenance of a sales centre which will encumber the public right of way on the Market Street flank of 18 Lower Jarvis Street.

Financial Impact

There is no financial impact to the City as a result of this report.

ISSUE BACKGROUND

A representative of Context (Real Estate) Inc. submitted an application to construct and maintain a sales centre within the public right of way on the Market Street flank of 18 Lower Jarvis Street. The applicant plans to develop a mixed-use project on the property consisting of an 8-storey podium and a 33-storey residential tower. Construction of the project is expected to commence in November 2009.

The representative of Context Inc. has advised that an agreement of Purchase and Sale is in place which stipulates that ownership of 18 Lower Jarvis Street will be transferred to Context Inc. upon the start of construction; until that time the current owner, Harold and Michael Gross Realty Inc., will retain ownership and exclusive use of the property.

Currently, the property owners operate an above-grade parking lot at the location and hold 8 boulevard parking licences within the public right of way where the applicant proposes to construct the sales centre. An invoice has been forwarded to the property owner requesting payment for the boulevard parking licenses for the period of January 1, 2008 to December 31, 2008, in the amount of \$3,168.96 which remains outstanding.

The applicant claims that they have not been able to find a rental property in the immediate area to house the sales centre. Furthermore, the applicant advises that they are not able to easily construct the sales centre within the site because they do not own the property and the parking lot operator will not allow for this.

Of note, directly across from where the applicant proposes to construct the sales centre is a residential complex with a day care facility and to minimize the impact with respect to advertising on the residents together with the users of the day care facility, the applicant has agreed to revise their proposal to remove all advertising from the west elevation of the sales centre and keep the advertising solely to the east side of the sales centre which will overlook the parking lot.

The proposed sales centre will be situated 1.3 m back of the curb line of Market Street and given that there is a potential conflict with the proposed piles (footings) for the sales centre and an existing gas line, which runs parallel to the curb of Market Street, Enbridge Gas has requested that the applicant expose the main at each pile location before drilling. In addition, the applicant has been requested to confirm the elevation of the sales centre from the ground to determine if the main will require moving. Of note, the proposed set back from the curb line of Market Street will provide an area which pedestrians can use if needed to avoid vehicles using Market Street.

A digital photo of the applicant's proposal for the sales pavilion is shown on Appendix 'A'.

COMMENTS

Applicable Regulation

There are no provisions within the former City of Toronto Municipal Code, Chapter 313, Streets and Sidewalks, to allow for the construction of sales centres within the public right of way, therefore we are required to report to City Council on this matter.

Reasons for refusal

Municipal Code Chapter 313, Streets and Sidewalks, provides for various uses of the public right of way but does not include the construction of sales centres.

The applicant has requested that the sales centre be in place for a period of 18 months with the option to re-evaluate whether additional time is needed. This is an extensive period of time to have such a large structure with an advertising component encumber the public right of way. Staff is also concerned that the sales centre may remain in place much longer than anticipated if the proposal does not sell quickly.

Notwithstanding this, the construction of the sales centre within the public right of way would set a precedent to future developments, since a request of this nature has not been permitted in the past.

Alternate Recommendations

Should City Council decide to grant approval for the construction and maintenance of a sales centre measuring approximately 46 m by 6.4 m (294.4 m²) within the public right of way on the Market Street flank of 18 Lower Jarvis Street, Transportation Services recommends that:

1. the sales centre including the stairs and barrier-free ramp to be set back 1.3 m from the curb of Market Street;
2. the property owners relinquish their existing boulevard parking licence;
3. the applicant is to adhere to and satisfy all requirements/clearances requested by Enbridge Gas Distribution;
4. Context Inc. enter into a licence agreement for the construction and maintenance of the sales centre with the City of Toronto, agreeing to but not limited to the following:
 - a. design, construct and maintain the sales centre as necessary at their own expense in good repair and in a condition satisfactory to the General Manager of Transportation Services and will not make any additions or modifications to the sales centre beyond what is allowed under the terms of the Agreement;
 - b. obtain approval for the construction of the sales centre from Toronto Building;

- c. pay an annual rental fee of \$72,800.00 for the use of the public right of way as determined by the Director of Real Estate Services, Facilities & Real Estate, to be adjusted annually by the Consumer Price Index (CPI);
- d. the maximum term of the lease shall not extend beyond a 24 months period;
- e. advertising on the sales centre be permitted on the east elevation only, facing Lower Jarvis Street;
- f. remove the sales centre for municipal and/or public utility purposes, upon receiving 90 days written notice to do so;
- g. indemnify the City from and against all actions, suits, claims or demands and from all loss, costs, damages and expenses that may result from such permission granted and providing of an insurance policy for such liability for the lifetime of the Agreement in a form as approved by the Deputy City Manager and Chief Financial Officer and in the amount not less than \$2,000,000 or such greater amount as the Deputy City Manager and Chief Financial Officer may require;
- h. that Legal Services be requested to prepare and execute the licence agreement; and
- i. accept such additional conditions as the City Solicitor or the General Manager of Transportation Services may deem necessary in the interest of the City.

CONTACT

Ken McGuire, Supervisor, Right of Way Management
Tel: 416-392-7894, Fax: 416-392-7465, E-mail: kmcguire@toronto.ca

SIGNATURE

Andrew Koropeski, P.Eng.
Director, Transportation Services

ATTACHMENTS

Appendix 'A' – digital photo of applicant's proposal

P:\2008\Cluster B\TRA\Toronto and East York\row\te08021te.row - cam