



STAFF REPORT ACTION REQUIRED

Encroaching Foundation Wall - 500 Sherbourne Street

Date:	August 19, 2008
To:	Toronto and East York Community Council
From:	Manager, Right of Way Management, Transportation Services Toronto and East York District
Wards:	Toronto Centre-Rosedale – Ward 27
Reference Number:	Te08063te.row

SUMMARY

This staff report is about a matter which Community Council has delegated authority from City Council to make a final decision.

Transportation Services has assessed a request from the agent of the owner of 500 Sherbourne Street to allow the ongoing maintenance of a foundation wall which encroaches within portions of the public right of way fronting 500 Sherbourne Street and the abutting public laneway “Wellesley Lane”.

As the encroaching foundation wall is minimal and does not impact negatively on the public right of way, Transportation Services recommends approval of the encroachment.

RECOMMENDATIONS

Transportation Services recommends that Toronto and East York Community Council:

1. approve the ongoing maintenance of the foundation wall fronting 500 Sherbourne Street and on the Wellesley Lane flank of 500 Sherbourne Street which encroaches within portions of the public right of way, subject to the owner entering into an encroachment agreement within the City of Toronto, agreeing to but not limited to the following:
 - a. indemnify the City from and against all actions, suits, claims or demands and from all loss, cost, damages and expenses that may result from such permission granted and providing 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 an amount not less than \$2,000,000 or such greater amount as the Deputy City Manager and Chief Financial Officer may require;

- b. maintain the foundation wall at their own expense in good repair and a condition satisfactory to the General Manager of Transportation Services and will not make any additions or modifications to the encroachment beyond what is allowed under the terms of the Agreement;
 - c. obtain approval for associated work on private property from Toronto Building;
 - d. pay an annual fee for the encroaching garage foundation wall within the public right of way as determined by the Director, Real Estate Services, Facilities and Real Estate, to be adjusted annually by the Consumer Price Index (CPI);
 - e. limit the life of the Agreement to the removal of the encroachment or the date of the demolition of the building at 500 Sherbourne Street, whichever is the less;
 - f. pay for the costs of preparing and registration of the agreement on title; and
 - g. accept such additional conditions as the City Solicitor or the General Manager of Transportation Services may deem necessary in the interest of the City;
2. direct Legal Services and/or the General Manager of Transportation Services to extend the Encroachment Agreement to the new owner, in the event of sale or transfer of the property abutting the encroachments, subject to the approval of the General Manager of Transportation Services; and
 3. request Legal Services to prepare, execute and arrange to register the Encroachment Agreement on title.

Financial Impact

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

ISSUE BACKGROUND

The approved development at 500 Sherbourne Street is located on the west side of Sherbourne Street, between Wellesley Street East and Earl Street and abuts Wellesley Lane. The project consists of a 34 storey residential building comprising of approximately 343 units with a common underground parking garage.

In connection with a rezoning application, the owner has entered into a Section 37 Agreement and pursuant to this agreement the owner is required to convey to the City an 8.9 m wide strip of land to the full extent of the site abutting Wellesley Lane. Wellesley Lane measures 4.1 m in width and will ultimately be widened to 15 m. The owner has been permitted to occupy subsurface lands below the conveyed lands for the purpose of building a parking garage structure. The subsurface lands are excluded from the street/widening conveyance subject to the conditions outlined in the Section 37 Agreement executed between 1540340 Ontario Inc. and the City of Toronto, dated December 6, 2005. The below grade construction of the project is progressing and almost completed. The developer has applied to Toronto Building to obtain their Superstructure Building Permit and it has become apparent that while constructing the wall to the parking garage, the developer has constructed the wall of the garage into the public right of way of Wellesley Lane. In addition, it has been determined that portions of the garage wall at two points extend into the public right of way of Sherbourne Street as well. Toronto Building has advised that until the developer receives approval and an encroachment agreement for the foundation wall from Transportation Services, they will not issue the building permit.

The agent on behalf of the owner has submitted an application requesting permission to maintain the foundation walls which encroach 0.18 m within the public laneway abutting Wellesley Lane for a span of approximately 144.6 m together with the portion of the foundation wall that extends within the Sherbourne Street public right of way in two locations, namely; 0.93 m for a span of 2.86 m and 0.15 m for a span of 13.6 m. The roof slab of the parking garage is situated approximately 1.7 m below the level of the proposed grade of the boulevard and laneway.

In support of their application, the applicant has provided the following comments. The former building located at 500 Sherbourne Street was the Princess Margaret Hospital. While demolishing the building, it was determined that the former foundation wall of the hospital was built right up to the property line. Prior to demolishing the former foundation wall, it was necessary to secure the adjacent public right of way (Wellesley Lane) by placing their shoring piles at the exterior side of the existing foundation wall and because of this reason, it was necessary to place their shoring piles on and beyond the property line. Of note, Construction Permit No. 29373804 was issued on December 9, 2005 to the property owner allowing for the installation of the tie-back piling and shoring system to extend within the public right of way of Wellesley Lane and Sherbourne Street. Although, they could have built the new foundation wall within the limits of private property and backfill the area between the two walls, there was only approximately 0.2 m gap for the forming contractor to form the exterior side of the wall which was impossible for a worker to work within that gap.

Staff have consulted with Appraisal Services, Facilities and Real Estate, Corporate Services, to determine the annual rental licence fee for the encroaching parking garage foundation wall within the public right of way of Wellesley Lane and Sherbourne Street, however, this information was not available at the time of preparing our report. It is

recommended that the initial fee be utilized and the fee be adjusted annually by the Consumers Price Index.

COMMENTS

Applicable regulation

As there are no provisions within the former City of Toronto Municipal Code Chapter 313, Streets and Sidewalks, to allow for the installation of the foundation walls, we are required to report to Community Council on this matter.

Reasons for approval

Transportation Services has reviewed the request and determined that the encroachments are minimal and the maintenance of the foundation wall will not impact negatively on the public right of way.

Details of the encroachments are on file with Transportation Services.

Photos of the property are shown on Appendix 'A'.

CONTACT

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SIGNATURE

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ATTACHMENTS

Appendix 'A' – photos

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