



## STAFF REPORT ACTION REQUIRED

### Underground Garage Encroachment – 501 Adelaide Street East

<b>Date:</b>	May 11, 2009
<b>To:</b>	Toronto and East York Community Council
<b>From:</b>	Manager, Right of Way Management, Transportation Services Toronto and East York District
<b>Wards:</b>	Toronto Centre-Rosedale - Ward 28
<b>Reference Number:</b>	Te09056te.row

#### SUMMARY

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Transportation Services has assessed a request on behalf of Toronto Community Housing Corporation (TCHC) to maintain an underground garage encroachment that extends beneath the public lane right-of-way immediately east of 501 Adelaide Street East approximately 1.5 m x 41.14 m.

As the maintenance of the underground garage does not impact negatively on the public right of way, Transportation Services recommends City Council's approval of the encroachment, subject to the owner entering into an encroachment agreement for the underground garage.

#### RECOMMENDATIONS

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##### Transportation Services recommends that City Council:

1. approve the construction and maintenance of the portion of the underground garage that extends beneath the public lane immediately east of 501 Adelaide Street East, subject to the property owner entering into an encroachment agreement with 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, costs, 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

\$5,000,000 or such greater amount as the Deputy City Manager and Chief Financial Officer may require;

- b. construct the portions of the underground garage at a depth of no less than 1.0 m below the finished surface of the public lane;
- c. ensure that the roof of the underground garage contains an adequate roof drainage system and is waterproofed with an appropriate membrane and protected against damage from the use and maintenance of the public lane, including but not limited to tree root growth so as to prevent water penetration into the garage structure from the public lane and adjacent land;
- d. provide “as-constructed” drawings within 90 days of completing construction of the underground garage;
- e. maintain the underground garage 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 underground garage beyond what is allowed under the terms of the Agreement;
- f. prior to the commencement of repair, maintenance, restoration or reconstruction of integral or structural elements of the Parking Structure located under any part of the public lane, the owner shall submit the plans and drawings for the proposed work to the executive Director, Technical Services for approval and shall make all revisions thereto as may be required by such Director, acting reasonably. The Owner shall repair, maintain, restore or reconstruct any such integral or structural elements, or any elements affecting such integral or structural elements, of the Parking Structure in accordance with the plans and drawings approved by the Executive Director, Technical Services;
- g. ensure that maintenance, repair, restoration and reconstruction of the Parking Structure is in accordance with the Canadian Highway Bridge Design Code (CAN/CSA S6-00) for highway loading purposes, as amended, superseded or replaced from time to time and shall have same certified by a Professional Engineer;
- h. restore the public lane after any repair, maintenance, restoration or reconstruction of the Parking Structure to the satisfaction of the Executive Director, Technical Services;
- i. permit the City to enter the Parking Structure to inspect the state of repair and maintenance upon giving the Owner reasonable notice in writing. In the event that the Owner fails to repair or maintain the Parking Structure so as to properly provide the rights of support for the public lane located

above the Parking Structure or to properly restore the public lane, as required by this Agreement, and, in the event the City has provided the Owner with not less than thirty (30) days prior notice in writing, setting out the failure or defect and the Owner has not commenced and diligently continued to remedy such failure or defect, then the City may enter the Parking Structure and any adjacent land necessary for access to the Parking Structure and do such repair or maintenance work as is necessary to provide the required support and the City may restore the public lane all at the cost of the Owner;

- j. limit the life of the Agreement to the removal of the encroachment or the date of the demolition of the building, whichever is the lesser;
  - k. pay for the costs of preparing the agreement and the registration of the agreement on title; and
  - l. 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 encroachment, subject to the approval of the General Manager of Transportation Services; and
  - 3. request Legal Services to prepare, execute and register the Agreement on title.

### **Financial Impact**

Under the applicable provisions of Chapter 313 of the former City of Toronto Municipal Code, there are provisions in the Code to allow for the construction of tunnels, areaways and other openings (i.e., underground garage), subject to the applicant obtaining permission from Committee and Council upon a report being submitted by the General Manager of Transportation Services. In addition, the applicant is required to pay an annual rental fee based on market value for the portion of the underground garage that extends beneath 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). The estimated annual rental fee for the portion of the underground garage that extends beneath the public right of way is \$6,000.00 plus GST and PST adjusted annually by CPI for a ten (10) year term.

The proposed development of affordable rental apartments at 501 Adelaide Street East meets Council's exemption policies for non-profit housing and it is exempt from planning fees, building permit fees, municipal development charges and parkland dedication requirements that would otherwise apply, therefore it may be appropriate to waive the fees associated with the annual rental fee for the portion of the underground garage that extends beneath the public laneway. Should Council decide to waive the requisite fees,

the City will lose an annual rental fee of \$6,000.00 plus GST and PST adjusted annually by CPI for the first ten (10) year term.

The Deputy City Manager and Chief Financial Officer has reviewed this report and concurs with the financial implications.

## **ISSUE BACKGROUND**

The proposed development of affordable rental apartments at 501 Adelaide Street East was the subject of site plan approval which provided for amongst other things that an encroachment of an underground parking garage “in principle” to extend within the limits of the existing public lane right-of-way immediately east of 501 Adelaide Street East that runs north-south from Adelaide Street East. In addition, prior to occupancy, the owner was required to enter into an encroachment agreement, to the satisfaction of the General Manager of Transportation Services, for approval of the underground parking garage.

During the site plan approval process, staff within Transportation Services were consulted regarding the proposed underground parking garage. Transportation staff advised that in recognition that the public lane would be reconstructed in its entirety, as part of this proposal, and at no cost to the City, and that eliminating the encroachment would require the excavation of an additional parking garage level that would not otherwise be needed, the parking garage encroachment was acceptable “in principle”.

The north-south section of the public lane, originally laid out as a 3.05 m wide lane, was widened by 1.47 m on its west by By-law No. 545-90. Although the lane widening lands had been laid out and dedicated for public highway purposes, this lane had not been physically widened. The owner of 501 Adelaide Street East in keeping with the conditions of their site plan approval is proposing to reconstruct the full extent of the 4.52 m wide public lane.

Recognizing that the public lane will be used to access and egress the loading facilities at the rear of the property, and abutting properties to the east, a minimum width of 5.5 m was required (i.e., 4.52 m public lane combined with 0.98 m private property). In order to ensure that the 0.98 m wide strip of land is publicly accessible, the owner was required to grant an easement in favour of the City. The easement was to extend from the Adelaide Street East public right-of-way to a point approximately 40.95 m south thereof. Given that the easement will be traversed by refuse collection vehicles and other trucks when accessing the loading facilities, a minimum vertical clearance of 4.4 m was required. The easement agreement was registered in the land titles office in January 2009 as Instrument No. AT1992530.

Transportation Services has received an application on behalf of TCHC for permission to construct and to maintain an underground garage that extends beneath the public lane right-of-way immediately east of 501 Adelaide Street East. The underground garage encroaches approximately 1.5 m within the public lane right-of-way beneath the public lane and commences from the south street line of Adelaide Street East to a point

approximately 41.14 m southerly thereof. The clearance from the top of the garage to the surface grade of the public laneway will be no less than 1.0 m.

Given the potential impact of these type of applications on existing underground utility services, it is the applicant's responsibility to undergo a public utility review with a view of obtaining clearances or sign-offs from the affected utility agencies or satisfying their requirements prior to the issuance of a construction permit authorizing work within the public right of way. Transportation Services has received clearances from the affected utility companies regarding the underground garage together with the streetscaping elements and determined that the proposed installations are acceptable and will not impact negatively upon the public right of way.

In order not to delay occupancy of the building, Transportation staff, at the request of the applicant, consulted with the Ward Councillor's office to determine if a construction permit could be issued prior to Council's approval. The Councillor's office concurred with the issuance of the requisite construction permit to avoid delaying the project.

Inspection shows that the construction of the underground garage is complete and the building itself is nearing completion. The owner is anxious to finalize the applicable encroachment agreement prior to occupancy of the building.

## **COMMENTS**

### **Applicable regulation**

Under the applicable provisions of Chapter 313 of the former City of Toronto Municipal Code, Streets and Sidewalks, there are provisions in the Code to allow for the construction of tunnels, areaways, and other openings subject to the applicant obtaining permission from Committee and Council upon a report being submitted by the General Manager of Transportation Services. In addition, the applicant is required to pay an annual rental fee based on market value for the underground garage as determined by Facilities & Real Estate.

### **Reasons for approval**

Transportation Services has reviewed the request and determined that the construction and maintenance of the underground garage will not impact negatively on the public right of way, subject to the owner entering into an encroachment agreement.

Details of the encroachment are on file with Transportation Services.

A photo of the property is shown on Appendix 'A'.

## **CONTACT**

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## **SIGNATURE**

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Angie Antoniou, Manager  
Right of Way Management

## **ATTACHMENTS**

Appendix 'A' – photo

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