



## STAFF REPORT ACTION REQUIRED

### Various Encroachments – 661 University Avenue

<b>Date:</b>	June 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 27
<b>Reference Number:</b>	Te09063te.row

#### SUMMARY

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Transportation Services has assessed a request from ARE-BJ Holdings No. 1 Inc., on behalf of the owner of 661 University Avenue, MaRS Discovery District, to construct various encroachments within the public right of way fronting University Avenue amongst which include planting beds with concrete toe walls, six silva cell systems, nine concrete and granite benches, and an irrigation system. In addition, the applicant is proposing to construct an underground tunnel linking 661 University Avenue to the Toronto Transit Commission's Queen's Park subway station.

Given that the proposed encroachments including the underground tunnel will not impact negatively the public right of way, Transportation Services recommends City Council's approval, subject to the lessee entering into an encroachment agreement and upon termination of the lease, the owner will assume responsibility for the encroachment agreement.

#### RECOMMENDATIONS

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**Transportation Services recommends that City Council:**

1. approve the ARE-BJ Holdings No. 1 Inc. request to construct an underground tunnel linking 661 University Avenue to the Toronto Transit Commission's Queen's Park subway station and to install and maintain various streetscaping elements amongst which include four planting beds with concrete toe walls, six silva cell systems, nine concrete and granite benches, and an irrigation system fronting 661 University Avenue within portions of the public right of way, subject to ARE-BJ Holdings No. 1 Inc. entering into an encroachment agreement for the

streetscaping elements 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 life time 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. obtain approval for associated work on private property from Toronto Building;
- c. design and construct the underground tunnel 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 it certified by a Professional engineer;
- d. ensure that the roof of the underground tunnel structure 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 right of way, including but not limited to tree root growth so as to prevent water penetration into the underground tunnel structure from the public right of way and adjacent land;
- e. maintain records of all phases of the construction of the underground tunnel structure and upon completion advise the Executive Director, Technical Services, of all construction changes and final measurements thereof and to prepare and submit final “as-constructed” design drawings of the underground tunnel structure in the form required by the Executive Director, Technical Services within 90 days of completing its construction;
- f. following construction of the underground tunnel structure, to furnish the Executive Director, Technical Services, with a certificate stating that the work has been completed in accordance with the design drawings and that, in the opinion of the tunnel structure consultant, the underground tunnel structure will support the City right of way including its construction and maintenance during the life expectancy of the public right of way and tunnel structure;
- g. limit the life of the Agreement to the removal of the encroachments or the date of the demolition of the building at 661 University Avenue, whichever is less;

- h. pay for the costs of preparing and registration of the Agreement on title;
    - i. obtain up to date clearances and/or sign offs from all effected public utilities within the proposed area of construction and satisfy any requirements they may have;
    - j. provide written confirmation that the owner agrees to allow the lessee to enter into an encroachment agreement and upon expiry or termination of the lease, the owner will assume responsibility for the encroachment agreement; and
    - k. 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 register the Agreement on title.

### **Financial Impact**

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

### **ISSUE BACKGROUND**

The development (MaRS Phase 2) is located at the south east corner of University Avenue and College Street and is municipally known as 661 University (formerly part of 101 College Street). The proposed site includes the construction of a 20-storey office, research and development building. Construction of the site has commenced but has been suspended for an indeterminate amount of time due to the current economic climate.

For the information of the Toronto and East York Committee, ARE Holdings No. 1 Inc. and MaRS Discovery District have entered into a long term lease agreement (99 year) at 661 University Avenue.

ARE-BJ Holdings No. 1 Inc has submitted an application requesting permission to construct/install various encroachments including an underground tunnel linking 661 University Avenue to the Toronto Transit Commission's Queen's Park subway station, four planting beds with concrete toe walls, six silva cell systems, nine concrete and granite benches, and an irrigation system within portions of the public right of way fronting 661 University Avenue.

The underground tunnel will connect the building at 661 University Avenue, which is currently under construction, to the existing tunnel to Queen's Park Station, located at the

southeast corner of College Street and University Avenue. The proposed encroachment will be minimal and triangular in shape approximately 3.0 m<sup>2</sup>. ARE Holdings No.1 Inc. will be required to enter into an Entrance Connection Agreement with the TTC. The Toronto Transit Commission will be taking over the responsibility of the maintenance of the new section of the tunnel.

The four planting beds with curbs will be constructed immediately back of the sidewalk and will be surrounded by 0.15 m high, 0.2 m wide concrete toe walls rather than 0.46 m in keeping with the Municipal Code requirements. The proposed planters will commence approximately 29.6 m south of the College Street curb, will measure 4.0 m by 9.6 m, 4.0 m by 9.8 m connected to a larger 8.64 m by 9.4 m section, 8.5 m by 9.4 m, and 8.35 m by 9.6 m, respectively.

The six silva cell systems will be installed beneath the City sidewalk and run along side and in between the four planter beds.

The nine benches will be installed entirely within the right of way and consist of concrete with granite coping with 0.45 m footings, and be 0.6 m high, 0.6 m wide, and 3.6 m long. Two of the nine benches will be set back immediately behind the sidewalk.

Given the potential impact of this type of application 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 and satisfy their requirements prior to the issuance of a construction permit authorizing work within the public right of way. Transportation Services received clearances from the affected utility companies regarding the tunnel and streetscaping elements and determined that the proposed installations are acceptable and will not impact negatively on the public right of way.

As indicated, the project has been suspended for a period of time and therefore, it will be necessary for the applicant to provide up to date PUCC clearances should the construction of the tunnel and streetscaping elements commence past the validity dates of the PUCC clearances.

Prior to approving any work within the public right of way, it may be prudent for the lessee ARE Holdings No. 1 Inc. to provide written confirmation that the owner MaRS Discovery District is in agreement with the encroachment agreement and will assume the agreement upon expiry or termination of the lease.

## **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.

The installation of concrete benches, irrigation system, and planters with toe walls can be considered under the former City of Toronto Municipal Code Chapter 313-50 which requires that the installations maintain a 0.46 m setback from the rear edge of the City sidewalk.

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 silva cell systems, we are required to report to Community Council on this matter.

### **Reasons for approval**

Transportation Services has reviewed the request and determined that the construction and maintenance of the tunnel and both above and below grade streetscaping elements will not impact negatively on the public right of way, subject to the lessee, ARE Holdings No.1 entering into an encroachment agreement and providing up to date utility clearances. Furthermore, the lessee should provide written confirmation that the owner of 661 University Avenue, MaRS Discovery District agrees to allow the lessee to enter into an encroachment agreement and upon expiry or termination of the lease, the owner will assume the encroachment agreement.

Details of the encroachment 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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Angie Antoniou  
Manager, Right of Way Management

### **ATTACHMENTS**

Appendix 'A' – photos

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