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September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

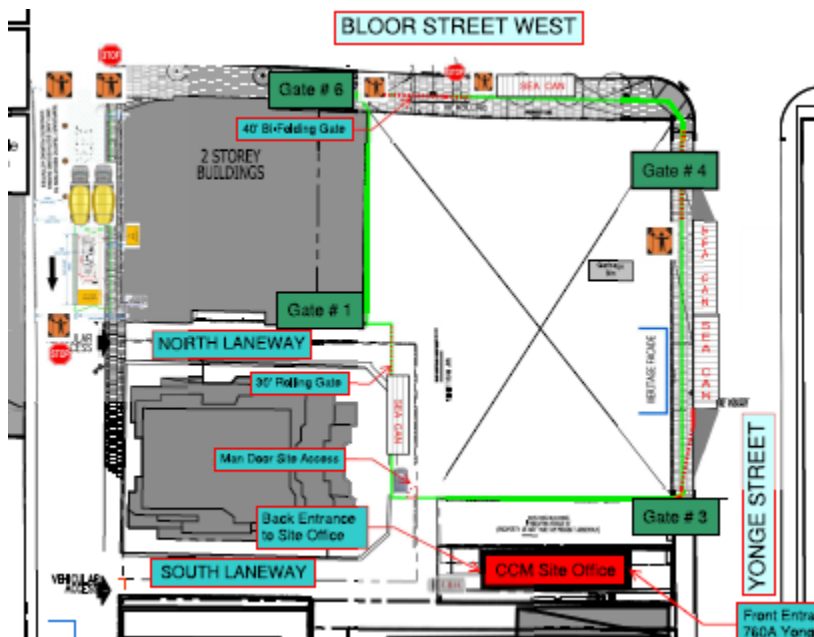
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or even sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonably to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) **before** allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H		CONTACT: Jay Cha Phone: (416) 274-2629
LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS		City Ward: 11 District: Toronto and East York
PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour		

TIME PERIOD:			
From:	To:	Restriction During Period	
July 14, 2020	7:00 am	August 21, 2020	7:00 pm (Daily) Monday-Friday
Standard Conditions The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf			

SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services



Issued by: Sheel Radia
Date Issued: Jul 14, 2020

Applicant or Signing Officer: _____

Date Printed: Jul 14, 2020