

Noise Exemption Permit Refusal Appeal – 1 Bloor St, West

Date: March 23, 2023

To: Toronto and East York Community Council

From: Director, Bylaw Enforcement, Municipal Licensing and Standards

Wards: 13

SUMMARY

1 Bloor Street West is an 85 Storey condominium.

The matter before the Community Council is an appeal application for a construction noise exemption permit submitted by Mizrahi Development Group (The One) Inc. through their solicitor Dentons Canada LLP. The application requests construction activities to between 5:00 am to 11:00 pm from Monday through to Sunday and statutory holidays. The requested hours outside the bylaw time limits are to conduct low-noise activities (concrete-pouring and crane operation (electric crane, minimal noise), no jackhammering or demolition). The application further seeks exemption from the Noise Bylaws Loading and Unloading time limits, to allow for loading and unloading operations outside of the allowable time limits as per Section 2.4 (A) of the Noise Bylaw.

The noise permit is specifically requested to remove the restrictions of bylaw:

- § 591-2.3.(1), which restricts construction noise between 7am and 7 pm Weekdays and 9am to 7pm on Saturdays.
- § 591-2,4(A), which restricts loading and unloading noise from 7am to 11pm Weekdays and 9am to 11pm weekends and statutory holidays.

The noise exemption permit was requested to expedite the overall completion date of the project, shortening the window whereby it contributes to traffic congestion and lane closures. It would also allow the development to progress to higher floors at a faster rate which would reduce noise impacts of ground and lower-level occupants.

The application was refused by Municipal Licensing and Standards (ML&S) on the basis of the Ward Councillor's objection. The applicant has appealed the refusal.

As required for the appeal process, this staff report provides information to assist in the decision making for which Toronto and East York Community Council has delegated authority from City Council to make a final decision, namely a final decision under Toronto Municipal Code Chapter 591, Noise (Noise By-law) to either grant or refuse a noise exemption permit application given the appeal.

If the Community Council grants the noise exemption permit application, it is subject to the conditions set out in § 591-3.2. D. of the Noise By-law, unless the Community Council determines otherwise, and to any other conditions respecting health, safety and nuisance as the Community Council considers advisable.

RECOMMENDATIONS

As per Chapter 591 – Noise Bylaw it is recommended that the Toronto and East York Community Council review the noise exemption permit application submitted by Mizrahi Development Group (The One) Inc. through their solicitor Dentons Canada LLP for construction noise and loading and unloading noise related to the development located at 1 Bloor Street West, Toronto. The available options are:

1. Refuse the application. OR,
2. Grant the application subject to the conditions set out in § 591-3.2.D of the Noise By-law, unless the Community Council determines otherwise, and to any other conditions respecting health, safety and nuisance as the Community Council considers advisable.

FINANCIAL IMPACT

There are no financial impacts expected as a result of a decision by Community Council to either refuse or grant the noise exemption permit.

DECISION HISTORY

As required by the Noise By-law:

On December 15, 2022, the applicant, Mizrahi Development Group (The One) Inc. through their solicitor Dentons Canada LLP., submitted a noise exemption permit application for construction noise related to the development located at 1 Bloor Street West, Toronto. The noise exemption application was requested to expedite the overall completion date of the project, shortening the window whereby it contributes to traffic congestion and lane closures. It would also allow the development to progress to higher floors at a faster rate which would reduce noise impacts of ground and lower-level occupants. Further included in the application was a request seeking an exemption from the Loading and Unloading restrictions under section 2.4(A) including the below documents. (Attachment 1)

Included in the application were:

- A completed Noise Mitigation Plan and supporting documentation.
- A copy of Mizrahi's Temporary Street Occupation Permit dated March 12, 2021.

- A copy of Mizrahi's Construction Permit, dated June 8, 2021; and,
- A copy of Mizrahi's Temporary Street Occupation Permit dated June 18, 2021.

Municipal Licensing and Standards (ML&S) provided notice of the application to the Ward Councillor via email on December 16, 2022. On December 23, 2022, the applicant was advised by email that the Councillor was opposed to the 5am start but was willing to negotiate possible evening hours if the BIA and residents' associations are included in the discussions (Attachment 2).

Municipal Licensing and Standards followed up as to the status of negotiations on January 23, 2023 (Attachment 3) and subsequently on January 23, 2023, a notice was sent to the applicant (Attachment 4) that the Ward Councillor objected to the application being approved. Accordingly, Municipal Licensing and Standards (ML&S) refused the noise exemption permit application based on the Ward Councillor's objection.

On January 30, 2023, it came to the attention of Municipal Licensing and Standards that there may be some discussions between the Ward Councillors Office and the applicant in regard to the application.

On February 13, 2023, the applicant filed an appeal of the refusal (Attachment 5) with their rationale that included a Report by an Acoustic Consulting Firm as well as willingness to negotiate some time period requests from 5am to 6am.

The hearing is scheduled for April 12, 2023.

ML&S will be providing the Notice of Hearing to all residents within 100 metres of the location on or before March 29, 2023.

COMMENTS

Noise Exemption Permits – Process:

The Noise By-law provides standards for noise and applies to all properties in Toronto. Applications for noise exemption permits may be made for special events, events in parks, and construction activity that extends beyond permitted hours under § 591-3.2 of the Noise By-law. The applicant is required to submit an application, pay the applicable fee, and provide any supporting information relevant to the noise exemption permit application. This information may include reasons supporting an exemption, a noise mitigation plan, or a statement certified by a professional engineer or acoustical consultant for any sounds that are not technically or operationally feasible to control.

Exemption permits are reviewed by the Ward Councillor(s) and issued if the Councillor approves the exemption or does not respond within 14 days. The Noise Exemption application submitted by the applicant on October 8, 2021, fulfilled all the requirements of the Bylaw (591-3.2 C 3 (a-f) including payment of the applicable fees.

If the application is approved, then the applicant is required to adhere to the eight conditions in § 591-3.2. D. These conditions include posting the noise exemption permit in a visible location, following the noise mitigation plan provided, adhering to a

maximum sound level of 85 dB(A), and if required, paying for City staff to monitor the sound levels.

If an exemption permit is objected by the Ward City Councillor(s), an applicant may appeal within 21 days of the decision to the local Community Council(s). If appealed, then notice of hearing is sent to all residents within 100 metres of the location where the event or activity is proposed to be held.

The Executive Director, Municipal Licensing and Standards (ML&S) has the authority to revoke a noise exemption permit if there is non-compliance with its conditions.

Applicant is seeking a Noise Exemption Permit For: Construction Noise

Construction Noise

Under § 591-2.3 of the Noise By-law, the prohibited time periods for construction noise are from 7 p.m. to 7 a.m. the next day, except until 9 a.m. on Saturdays, and all day on Sundays and statutory holidays.

The applicant, Mizrahi Development Group (The One) Inc. through their solicitor Dentons Canada LLP is seeking a noise exemption permit to extend their hours of work for a 6-month period from date of issue, Monday through to Sunday (and statutory holidays) from 5:00 am to 11:00 pm.

Their proposal is that expediting the construction will move up the overall completion date of the project, shortening the window in which it may contribute to traffic congestion and requests for lane closures at the busy Yonge-Bloor intersection. It would also allow the development to progress to higher floors at a faster rate so that it is no longer in earshot of most ground and lower-level occupants.

They suggest that due to the nature of the equipment and proposed mitigation strategy, the impact on noise levels will be minimal, relative to the noise from the street at this busy intersection. All possible steps will be taken to mitigate noise impact on buildings in the vicinity. Also, with the prevalence of office and retail properties in the area they will focus our attention on mitigating noise after hours, that could impact the limited number of residential properties.

The main construction equipment to be used will be:

- Crane Operation (electric-powered crane is used to minimize sound emission)
- Hoist Operation (man-material hoist will be modified to reposition the motor on each cab and install sound attenuating shroud/blankets around the motor(s))
- Unloading of Trucks (trucks will be unloaded prior to 9pm)
- Concrete Trucks Back Up (beeping) (concrete trucks will only be used on Balmuto Street after hours)
- Bobcats (will not be used after 9pm)

- Pouring Concrete (most pours will be completed by 9pm)
- Formwork Installation (all formwork is enclosed behind ACS sound/wind screens)
- Deliveries (limited to before 9pm, for vehicles with a reverse beeping alert)
- Garbage Removal (limited to before 9pm)
- Bolting and Torquing (structural steel) (limited to before 9pm)
- Electric Pump

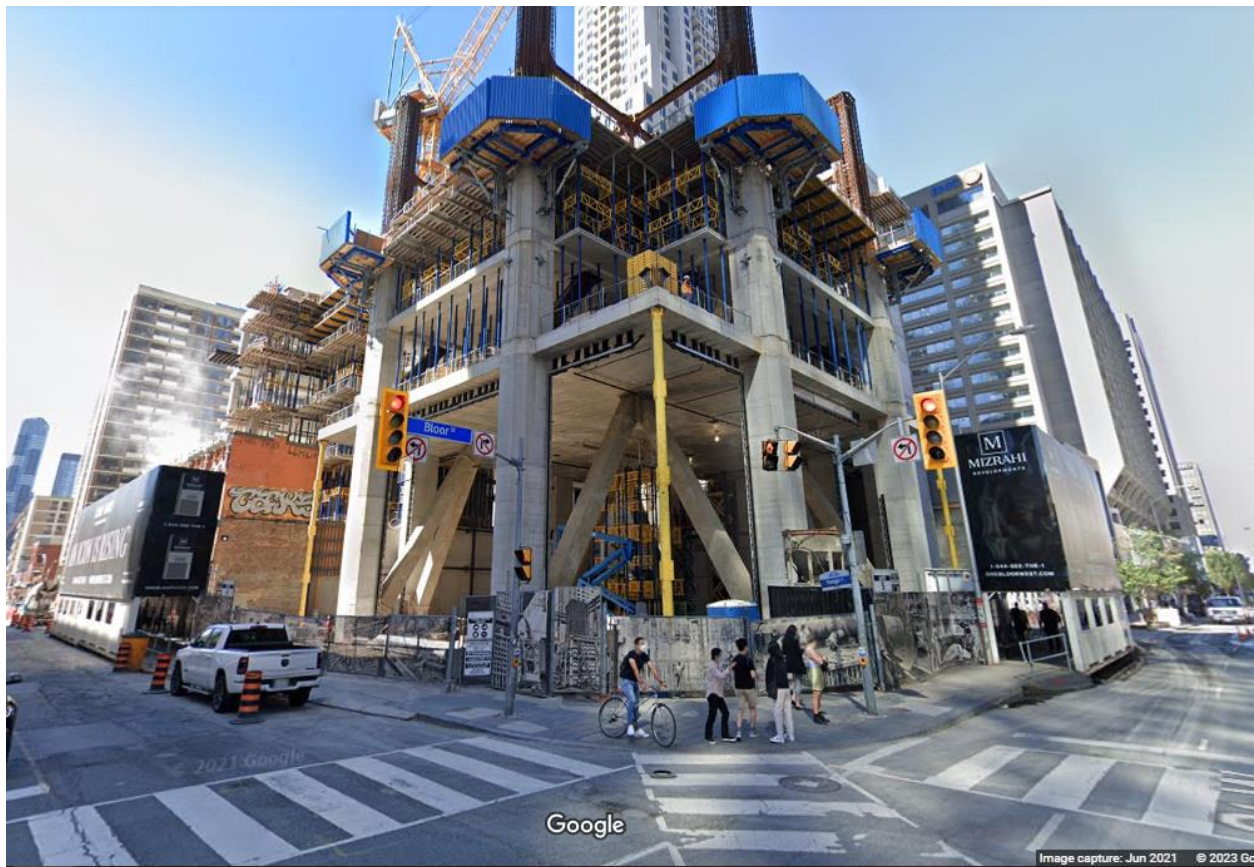
Noise Mitigation Measures RE – Site Organization:

- Install sound monitoring meters at the perimeter of the site, or if permitted, on adjacent buildings to ensure that sound levels do not exceed acceptable limits. These meters would provide real time notice to the Construction team 24/7, similar to ground source vibration monitors used during shoring operations. In the event of an exceedance, the exceeding activity would cease immediately.
- Pouring of concrete:
 - Initiating concrete pours prior to 3 pm so that they are completed by 7 pm, barring unusual circumstances beyond the control of the construction team.
 - Monitoring, tracking and scheduling concrete trucks using a delivery management app, in order to mitigate queuing.
 - Queuing of concrete trucks in rented city lane along Bloor Street, west of Yonge, to maintain distance from residential buildings.
- Use of a perimeter enclosure around the tower structure at the active construction level, and enclosing 4 trailing levels below, to mitigate sound emissions of formwork installation (banging/hammering/etc.), installation of reinforcing steel, placing of concrete, and finishing of concrete. This enclosure, referred to as the ACS, will contain the noise of the activities occurring within the confines and direct any noise upward.
- Use of a perimeter enclosure around the tower structure at the level where the windows are being installed, and enclosing 4 trailing levels below, to mitigate sound emissions from the installation of the windows at the perimeter of the tower and the installation of the metal siding systems at the interstitial mechanical floors. This enclosure, referred to as the RCS, will contain the noise of the activities occurring within its confines.
- Location of the concrete pump on Balmuto St., as far away as possible from the residential buildings, instead of within the laneway itself, immediately beside a residential tower. This measure mitigates noise from the concrete pump reverberating off the walls of the laneway.
- Employment of a shipping logistics manager dedicated to organizing “just in time” and scheduled deliveries to minimize the queuing of delivery vehicles.

- Limiting noisy deliveries to during the day and early evenings, Monday to Saturday, never on Sundays.

Noise Mitigation Measures – Equipment

- Electric pump with isolators, enclosed and surrounded by hoarding
- By-weekly maintenance of hoist gears and runners
- Man-material hoist will be limited to the first gear when operating next to an adjacent building and a heavy sound blanket will be placed over the engine
- Use of baffles to muffle the temporary stand-by emergency generator
- Jack hammering to only occur within normal work hours
- Demolition to only occur within normal work hours
- With the exception of concrete structure work (forming, placing, pouring, finishing), steel structure installation, exterior cladding installation, and deliveries, all other noise-generating construction activities will occur during regularly permitted hours.



Complaint History:

Municipal Licensing and Standards (ML&S) has received a total of 101 complaints, from October 2019 to January 2023, in relation to construction noise for the project located at 1 Bloor Street West. Currently there are three open complaint files for this site, all others are closed.

<u>Case Number</u>	<u>Subject</u>	<u>Status</u>	<u>Date Opened</u>
00107358	Construction Noise	In Progress	Jan 14/23
00106734	Construction Noise	In Progress	Dec 15/22
00106728	Construction Noise	In Progress	Dec 14/22
00105877	Construction Noise	Closed	Nov 21/22
00105331	Construction Noise	Closed	Nov 14/22
96 -Other cases	Construction Noise	All closed	

Enforcement History:

21 Noise Bylaw charges were laid against Mizrahi Development Group (The One) Inc. and Sam Mizrahi personally in his capacity as an officer and director of the corporate defendant. The charges span two separate offence periods of various occurrence dates in August 2021 and March 2022.

These charges have been the subject of two Judicial Pre-trials and numerous pre-trial communications between the parties. Through the disclosure and pre-trial process, the defence shared certain facts and information with the prosecution that was initially information that was only known and within the purview of the defence.

In addition, the prosecution found several civilian witnesses who are no longer interested in testifying in these matters.

Since the charges were laid, the defendant corporation has reasonably and responsibly engaged with ML&S in order to make application, negotiate, and be issued a Construction Noise Exemption Permit and several Continuous Concrete Pour Noise Exemption Permits.

The City of Toronto Prosecutor exercised his discretion and withdrew all the charges.

CONTACT

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SIGNATURE

Anna Fernandes
Director of Bylaw Enforcement

ATTACHMENTS

- Attachment 1: Noise Exemption Permit Application Package
- Attachment 2: Email from Councillors Office to applicant Dec 23_22
- Attachment 3: Email re Status of Negotiations
- Attachment 4: Denial Letter 1 Bloor St W C245001
- Attachment 5: Noise Exemption Permit Appeal – 1 Bloor Street West