



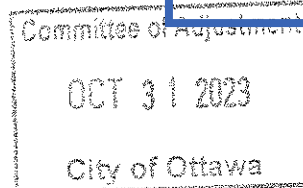
Committee of Adjustment
Received | Reçu le

2023-10-31

City of Ottawa | Ville d'Ottawa
Comité de dérogation

October 31, 2023

Committee of Adjustment
City of Ottawa
101 Centrepoin Drive
Ottawa, ON
K2G 5K7



Attention: Michel Bellemare, Secretary - Treasurer

Dear Mr. Bellemare

**Reference: 927 Wellington Street West
Application for Permission: Re-Circulation Request
City File No. D08-02-22/A-00227
Our File No. 120008**

Novatech, as applicant and representative of the owner of the property municipally known as 927 Wellington Street West (the "Subject Property"), hereby requests that Permission Application D08-02-22/A-00227 be recirculated and rescheduled to a new Committee of Adjustment hearing date. The application was adjourned *sine die* by the Committee of Adjustment (Panel 1) on December 7, 2022.

In the intervening time, our client has retained a legal opinion to support the position that the previous use was legally non-conforming and that the current use is a continuation of a similar non-conforming use.

Please find attached for reference a letter from Gowlings, dated August 11, 2023, and our original submission letter dated July 21, 2022. The recirculation fee of \$662 will be submitted directly to Committee of Adjustment.

Should you have any questions regarding this application, please do not hesitate to contact the undersigned.

Yours truly,
NOVATECH

Adam Thompson
Senior Project Manager | Planning & Development

Attach.

cc. 927 Wellington Street Inc.

July 21, 2022

Committee of Adjustment
City of Ottawa
101 CentrepoinTE Drive
Ottawa, ON
K2G 5K7

Attention: Michel Bellemare, Secretary - Treasurer

Dear Mr. Bellemare

**Reference: 927 Wellington Street West
Application for Permission
Our File No. 120008**

Novatech has been retained by the owner of the property municipally known as 927 Wellington Street West (the "Subject Property") to prepare and file an application for permission to change a legally non-conforming use to another similar non-conforming use. This letter describes the existing conditions of the site, the proposed development, and the rationale in support of the application.

Existing Conditions

The Subject Property is located in Ward 15 (Kitchissippi Ward) within the City of Ottawa. Specifically, the Subject Property is located in the Hintonburg-Mechanicsville neighbourhood, on the north-west corner of Wellington Street West and Bayview Station Road. The Subject Property has an area of approximately 927 m², a frontage of approximately 31.2 metres along Wellington Street West, and a frontage of 41.8 metres along Bayview Station Road. The existing two-storey commercial building is legally non-conforming with respect to rear yard setback.

The Subject Property is legally known as Part of Lots 1 & 2, Plan 89, North Wellington Street and Part of Lot 16, Plan 89, South Armstrong Street, in the City of Ottawa. The property is zoned Traditional Mainstreet, Subzone 11 (TM11) in the City of Ottawa Zoning By-law 2008-250.

Purpose of Application

A Notice of Violation was issued to the owner (927 Wellington Street Inc.) on January 5, 2021, based on a registered complaint against the property. The existing business operating at 927 Wellington Street West is a construction equipment rental company that supplies equipment and reusable materials for construction and building maintenance projects in the urban area of the City of Ottawa. Its location in proximity to the central area of the city supports the construction industry for infill projects within the urban area of the City of Ottawa.

As a result of the complaint, the owner retained Novatech to investigate the zoning and land use history of the property. The investigation concludes that the existing use is a similar non-conforming use that replaced a former legally non-conforming use.

Land Use and Zoning History

A review of air photos available on GeoOttawa shows that 927 Wellington Avenue has been developed since at least 1928. The 1991 air photo shows the property developed with a commercial building, surface parking, and two gas pumps (see Figure 1).

Figure 1 – GeoOttawa 1991 Air Photo



2007 Google Streetview shows the Subject Property developed as an automobile service station (Pantuso Automotive) including three vehicle service bays (see Figure 2). The fuel pumps have been removed. Based on the 1991 air photo and 2007 Google Streetview, a commercial building including the repair and service of motor vehicles was present on the Subject Property since at least the early 1990's. An exact date is unknown.

The Zoning By-law in effect in the early 1990s was City of Ottawa By-law Z-2K, which was adopted in March 1984. By-law Z-2K zoned the Subject Property as Commercial 1, Exception 43 (C1-c(2.0)[43]). A 'public garage' was a permitted use in the C1 zone in By-law Z-2K and Exception 43 did not contain any provisions that would remove 'public garage' as a permitted use. The 'public garage' was legally conforming to By-law Z-2K.

City of Ottawa By-law 93-98 replaced By-law Z-2K on May 20, 1998. The new zoning category for the Subject Property was General Commercial Subzone 1, FSI maximum of 2.0 (CG1 F(2.0)). By-law 93-98 also changed the definition of a automobile repair shop from 'public garage' to 'automobile service station'. The General Commercial Subzone 1 did not include 'automobile service station' as a permitted use and the existing automobile repair shop became a legally non-conforming use.

City of Ottawa By-law 2008-250 replaced By-law 93-98 and carried forward the previous zoning permissions which does not include 'automobile service station'.

The existing use on the Subject Property (Cooper Equipment Rentals) began operation between May 2016 and August 2017 (based on Google Streetview imagery) and has remained in operation since that time. A Notice of Violation of the Zoning By-law based on use was issued to the landowner on June 10, 2022.

Figure 2 – 2007 Google Streetview



Permission Application

Permission is sought to change the original legally non-conforming use (automobile service station) to a similar non-conforming use (heavy equipment and vehicle sales, rental and servicing).

Rationale

A change of a legal non-conforming rights is permitted under Section 45(2) of the Planning Act. Section 45(2) of the Planning Act states,

"In addition to its powers under subsection (1), the committee, upon any such application,

- a) *where any land, building or structure, on the day the by-law was passed, was lawfully used for a purpose prohibited by the by-law, may permit,*
- ii. *the use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed, if the use for a purpose prohibited by the*

by-law or another use for a purpose previously permitted by the committee continued until the date of the application to the committee;”

The decision of *Sims et al. v. Daschko* (included with this submission) explains that permitting the continuation of legal non-conforming rights is permitted when the following criteria are met.

“there must always be a prior consideration of whether what is intended is indeed desirable for the appropriate development or use of the land, building or structure. The effect of any concession made must always be weighed in the light of the impact it could have upon neighbouring properties enjoying a different classification”.

Permission to allow a legally non-conforming use as a change from a previous non-conforming use must be based on whether the proposed use is similar to the legally non-conforming use, the impacts of introducing another legally non-conforming use on neighboring properties, and whether the proposed use is appropriate and desirable for the area.

The first test for changing from a legal non-conforming use to another non-conforming use is whether the use is similar.

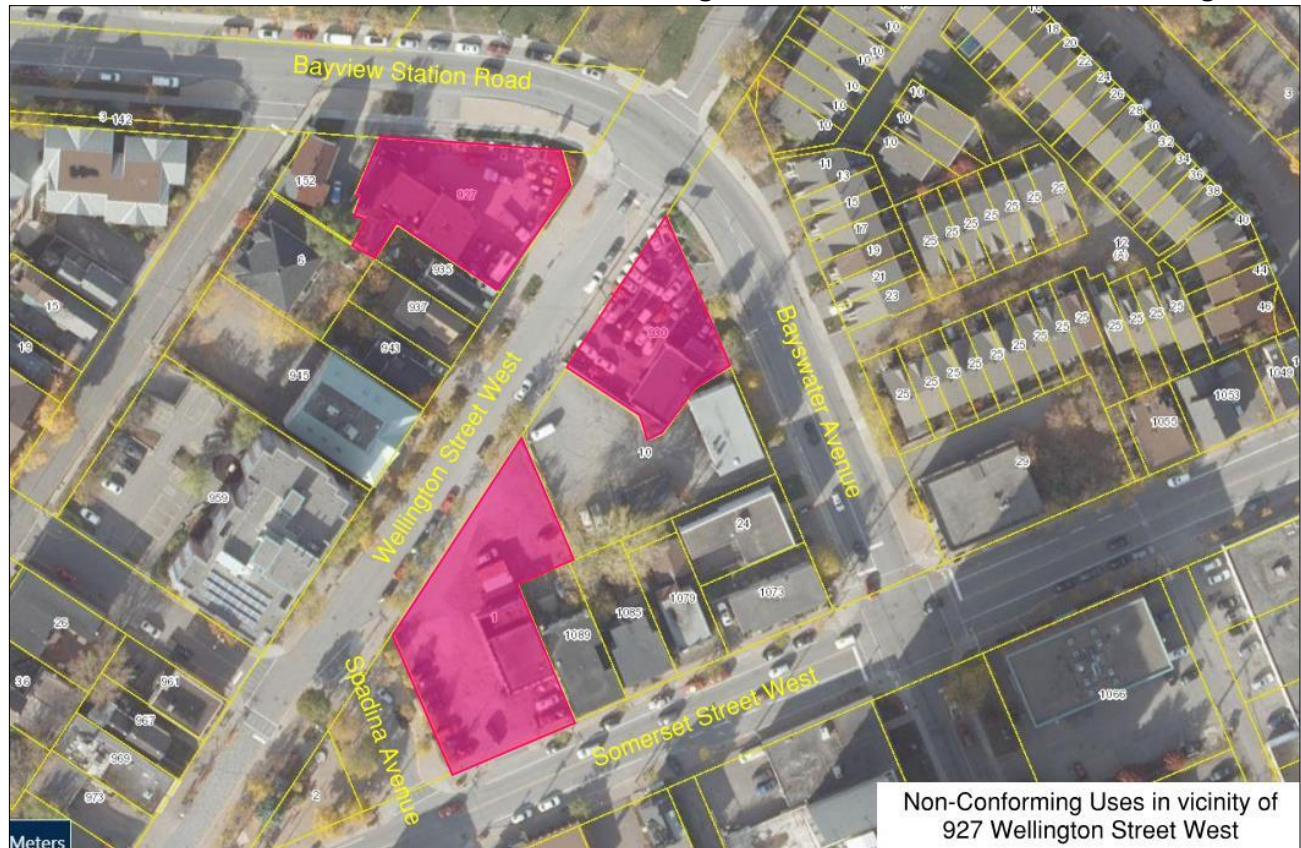
The previous use was an automobile service station. Potential impacts from an automobile service station include periodic noise from repair equipment (such as impact wrenches), potential odours from vehicles idling, and truck traffic generally limited to tow trucks and similarly sized vehicles.

The Subject Property is located in an area of the Hintonburg neighbourhood that contains a collection of non-conforming uses being primarily automobile service stations. 1 Spadina Avenue and 930 Wellington Avenue West contain non-conforming automobile service stations, which are similar in nature to the current use at 927 Wellington Avenue West (see Figure 3). These nearby non-conforming uses, together with the Subject Property, represent a small pocket of uses that have yet to be transitioned out of the neighbourhood. In the interim, they provide a service to the local community which supports the new City Official Plan’s goal of creating 15-minute neighbourhoods.

The current use provides a necessary service for small construction and building maintenance equipment, such as mini-excavators, mini-loaders, scissor lifts, portable generators and other small equipment. The location of this particular business, being located approximately 2 kilometres west from Downtown Ottawa, provides a central location for construction and maintenance projects that are located in the urban core of the City.

The first test for the permission to change from a legally non-conforming use to a similar non-conforming use is met.

Figure 3 – Location of Non-Conforming Uses



The second test for changing from a legally non-conforming use to another non-conforming use is impact.

The current use has the same potential impacts. Maintenance of vehicles has been replaced with maintenance of small construction equipment vehicles. Odours would generally be limited to fumes from idling equipment and vehicles, although this would not be a regular occurrence. Large vehicle traffic would be limited to flatbed delivery trucks for loading and unloading equipment. The current non-conforming use does not increase the potential for impacts on adjacent properties when compared to the previous legally non-conforming use.

The current non-conforming use, as defined by the Zoning By-law, is **'heavy equipment and vehicle sales, rental and servicing'**. The Zoning By-law states that, *"Heavy equipment and vehicle sales, rental and servicing is defined includes the sale, rental, servicing and accessory storage of heavy vehicles including farm vehicles or equipment, and transport trucks or trailers."*

The By-law further states that a heavy vehicle is defined as *"a commercial motor vehicle as defined in the Highway Traffic Act, as amended or re-enacted from time to time, and includes a bus and any other passenger motor vehicle with capacity for more than ten passengers, fire apparatus, road-building machine or farm vehicle as defined in that Act, and all other types of construction equipment, but excludes a motor vehicle."*

The construction and maintenance equipment being rented from the current non-conforming use is caught under this definition as the equipment is generally considered 'construction equipment'. The equipment being rented and serviced at this business is not heavy construction equipment as would generally be considered by these definitions, but rather smaller equipment similar to standard automobiles.

The second test for the permission to change from a legally non-conforming use to a similar non-conforming use is met as there are no greater impacts to adjacent properties.

The third test for the permission to change from a legally non-conforming use to a similar non-conforming use is whether the proposed use is appropriate and desirable.

The current use provides a necessary service for small construction and building maintenance equipment, such as mini-excavators, mini-loaders, scissor lifts, portable generators and other small equipment. The location of this particular business, being located approximately 2 kilometres west from Downtown Ottawa, provides a central location for construction and maintenance projects that are located in the urban core of the City.

The current use is appropriate for the property as it provides the opportunity for those living and working in the urban core of Ottawa to access construction and maintenance equipment in close proximity, maintaining the City's goal of providing a multitude of services that could support local neighbourhoods.

The current use will be transitional as the future intent for the Subject Property is to redevelop in the form of a mid- to high-rise mixed-use or residential building.

The third test for the permission to change from a legally non-conforming use to a similar non-conforming use is met as the proposed use is appropriate and desirable.

Conclusion

The proposed change of use conforms to Section 45(2) of the *Planning Act*. The change from a legally non-conforming use to a similar and compatible non-conforming use is permitted as the proposed use is similar in nature to the legally non-conforming use. The proposed use (heavy equipment and vehicle sales, rental and servicing) is similar in nature to the legally non-conforming use (automobile service station). The proposed non-conforming use will have no greater impact on surrounding properties than the previous legally non-conforming use. The permission to permit the continuation of current non-conforming use of the building at 927 Wellington Street West represents good land use planning.

In support of the application for permission, please find enclosed:

- A Permission Application Form
- The Decision of Sims et al. v. Daschko
- Application Fee in the amount of \$2,671

Should you have any questions regarding this application, please do not hesitate to contact the undersigned.

Yours truly,
NOVATECH



Adam Thompson
Senior Project Manager | Planning & Development

Attach.

Committee of Adjustment
Received | Reçu le

2022-09-27

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