

DECISION PERMISSION

Date of Decision:	January 26, 2024
Panel:	1 - Urban
File No(s):	D08-02-22/A-00227
Application:	Permission under section 45 of the <i>Planning Act</i>
Owner(s)/Applicant(s):	927 Wellington Street Inc.
Property Address:	927 Wellington Avenue
Ward:	15 - Kitchissippi
Legal Description:	Part of Lots 1, 2 and 16, Registered Plan 89
Zoning:	TM11
Zoning By-law:	2008-250
Hearing Date:	January 17, 2024, in person and by videoconference

APPLICANT'S PROPOSAL AND PURPOSE OF THE APPLICATION

- [1] The Owner wants to change the legal non-conforming use of the existing commercial building.
- [2] At its hearing on December 7, 2022, the Committee adjourned this application to allow the Applicant time to seek a legal opinion regarding legal non-conforming use. The Applicant now wishes to proceed with the application.

REQUESTED PERMISSION

- [3] The Owner/Applicant requires the Permission of the Committee to change the legally non-conforming use from an automobile service station to ~~Heavy equipment and vehicle sales, rental and servicing~~ **retail of and leasing, rental and sales of light construction equipment and contractor supply, repairs and maintenance.**
- [4] The Application indicates that the Property is not the subject of any other current application under the *Planning Act*.

PUBLIC HEARING

Oral Submissions Summary

- [5] Adam Thompson and Murray Chown, Agents for the Applicant, and Michael Polowin, the Applicant's lawyer, were in attendance. Mr. Thompson provided a

slide presentation, a copy of which is on file with the Secretary-Treasurer and available from the Committee Coordinator upon request.

[6] Mr. Thomson requested that the application be amended as follows:

“The Owner/Applicant requires the Permission of the Committee to change the legally nonconforming use from an automobile service station to **retail of and leasing, rental and sales of light construction equipment and contractor supply, repairs, and maintenance.**”

[7] Mr. Polowin stated that this amendment more accurately describes the operations on the property and reflects the terms of the operator’s lease agreement. With no objections raised, the application was amended accordingly.

[8] Summarizing the history of the property, Mr. Polowin explained that a former tenant and operator of the automobile service station abandoned the property in July 2016, and it was listed for lease the following month. A new lease was executed in February 2017. Mr. Polowin referred to the listing and subsequent lease of the property as evidence of the Owner’s intent to continue a legal non-conforming use.

[9] Mr. Thompson submitted that the former automobile service station and the current use on the property are similar in terms of noise, odour, and traffic impacts, and that the new use is desirable in this location because it will serve construction and building maintenance projects in the downtown area, as well as nearby residents for smaller projects. He also argued that, in this case, a permission application is more appropriate than a zoning by-law amendment because the current operation is intended to be temporary, and the property will eventually be redeveloped.

[10] City Planners Margot Linker and Jean-Charles Renaud responded to questions from the Committee. Ms. Linker stated that, following a complaint, the City had issued a notice of violation related to the change in use of the property. Mr. Renaud explained that, depending on the proposal, a zoning by-law amendment may require the submission of certain technical studies, including noise and traffic impact studies.

[11] Pursuant to discussion about technical studies in support of the submission, and a related question from the Committee, Mr. Renaud explained that, depending on the proposal, a zoning by-law amendment may require the submission of certain technical studies, including noise and traffic impact studies.

[12] Timothy Marc, City Legal Counsel, argued that the former automobile service station ceased operation in 2017 and was replaced with a new use, and therefore the Applicant is no longer eligible to apply for permission for a change of use under section 45 of the *Planning Act*. Alternatively, if the Applicant’s position is that the use of the property has not changed, only evolved or increased in intensity, he submitted that the correct option is not to apply for permission to change the use,

but to challenge the notice of violation. When asked by the Committee why they had not challenged the notice of violation, Mr. Thompson indicated that they had not had that discussion with their client.

[13] The Committee also heard oral submissions from the following individuals:

- L. Hoad, Hintonburg Community Association, agreed with the City's position that the use on the property changed significantly and stated that the new use has a significantly greater adverse impact on the surrounding community.
- Z. Guo, neighbour, raised concerns related to impacts from the operations on site, including odours, air pollution, noise and vibration from equipment, the storage of chemicals and propane in close proximity to his building, and regular water drainage onto his property from the use of pressure washers.
- C. Parrot, neighbour, raised additional objections related to the intensity of the operation on the site, including continuous noise and fumes from diesel engines, and trucks, equipment and other vehicles parking on adjacent roads and sidewalks and impeding traffic. Ms. Parrot also provided photographic evidence to support her comments.

[14] In response to the oral submissions, Mr. Polowin indicated that an increased intensity of use does not invalidate legal non-conforming rights.

[15] Following the public hearing, the Committee reserved its decision.

DECISION AND REASONS OF THE COMMITTEE: APPLICATION REFUSED

Application Must Satisfy Statutory Two-Part Test:

[16] The Committee has the power to permit a change of an existing legal non-conforming use to another, similar or more compatible use under subsection 45(2) of the *Planning Act*, based upon both the desirability of the development or use of the property in question and the impact on the surrounding area. It is also required that the legal non-conforming use continue until the date of the application to the Committee.

Evidence

[17] Evidence considered by the Committee included any oral submissions made at the hearing, as highlighted above, and the following written submissions held on file with the Secretary-Treasurer and available from the Committee Coordinator upon request:

- Application and supporting documents, including a planning rationale, a plan, pictures, tree information, a letter from a solicitor, an Ontario Municipal Board memo, a photo of the posted sign, and a sign posting declaration.

- City Planning Report received January 10, 2024, recommending refusal; received December 7, 2023, recommending refusal.
- City Legal Services Memo received January 8, 2024, with comments.
- Rideau Valley Conservation Authority email dated January 10, 2024, with no objections; dated December 7, 2023, with no objections.
- Hydro Ottawa email dated December 12, 2023, with no comments; dated December 6, 2023, with no comments.
- L. Hoad, Hintonburg Community Association, email dated January 15, 2024, with concerns.
- Z. Guo, neighbour, letter received January 16, 2024, with concerns.
- C. Parrott, neighbour, email dated January 15, 2024, opposed.
- D. Wood-Memic, neighbour, email dated January 16, 2024, with concerns.

Effect of Submissions on Decision

- [18] The Committee considered all written and oral submissions relating to the application in making its decision and refused the application.
- [19] Based on the evidence, the Committee is not satisfied that the requested permission meets either the precondition for the continuation of the non-conforming use or the two-fold test relating to desirability and impact.
- [20] The Committee notes that the City’s Planning Report “recommends refusal” of the application, highlighting that “without evidence whereby the automobile service station use did effectively continue on the subject land until the date the application was filed, Staff oppose the subject Permission application because the applicant is not eligible to change the use.”
- [21] The Committee also takes note of the written and oral submissions from area residents, and their photographs that clearly demonstrate a change in the type of use on the property, or a change in intensity significant enough to be considered a new use, which is neither similar to an automobile service station use nor more compatible with the uses permitted in the Traditional Mainstreet zone.
- [22] Considering the circumstances, the Committee finds that insufficient evidence was provided to demonstrate the continuation of the automobile service station use to satisfy that precondition for approval.
- [23] The Committee also finds that, because the change in use does not fit well in the area, the requested permission is, from a planning and public interest point of view,

not desirable for the appropriate use of the land, building or structure on the property, and relative to the neighbouring lands.

[24] Additionally, the Committee finds that the new use has created unacceptable adverse impacts on abutting properties and the neighbourhood in general.

[25] Moreover, the Committee finds that no compelling evidence was presented that the current use is similar to, or more compatible than, the former automobile service station use, and that the evidence provided by residents was persuasive in demonstrating that the new use is in fact less compatible.

[26] THE COMMITTEE OF ADJUSTMENT therefore does not permit the change in use.

"Ann M. Tremblay"
ANN M. TREMBLAY
CHAIR

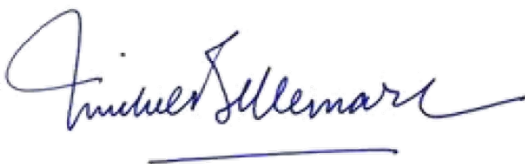
"John Blatherwick"
JOHN BLATHERWICK
MEMBER

"Simon Coakeley"
SIMON COAKELEY
MEMBER

"Arto Keklikian"
ARTO KEKLIKIAN
MEMBER

"Sharon Lécuyer"
SHARON LÉCUYER
MEMBER

I certify this is a true copy of the Decision of the Committee of Adjustment of the City of Ottawa, dated **January 26, 2024**



Michel Bellemare
Secretary-Treasurer

NOTICE OF RIGHT TO APPEAL

To appeal this decision to the Ontario Land Tribunal (OLT), a completed appeal form along with payment must be received by the Secretary-Treasurer of the Committee of Adjustment by **February 15, 2024**, delivered by email at cofa@ottawa.ca and/or by mail or courier to the following address:

Secretary-Treasurer, Committee of Adjustment,
101 CentrepoinTE Drive, 4th floor, Ottawa, Ontario, K2G 5K7

The Appeal Form is available on the OLT website at <https://olt.gov.on.ca/>. The Ontario Land Tribunal has established a filing fee of \$400.00 per type of application with an additional filing fee of \$25.00 for each secondary application. Payment can be made by certified cheque or money order made payable to the Ontario Minister of Finance, or by credit card. Please indicate on the Appeal Form if you wish to pay by credit card. If you have any questions about the appeal process, please contact the Committee of Adjustment office by calling 613-580-2436 or by email at cofa@ottawa.ca.

Only the applicant, the Minister or a specified person or public body that has an interest in the matter may appeal the decision to the Ontario Land Tribunal. A “specified person” does not include an individual or a community association.

There are no provisions for the Committee of Adjustment or the Ontario Land Tribunal to extend the statutory deadline to file an appeal. If the deadline is not met, the OLT does not have the authority to hold a hearing to consider your appeal.

Ce document est également offert en français.

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