

July 8, 2024

Mr. Michel Bellemare
Secretary-Treasurer
Committee of Adjustment
101 Centrepointe Drive, Fourth Floor
Ottawa, ON K2G 5K7

**RE: (Recirculation) Minor Variance Application
482 Preston Street, Ottawa**

Committee of Adjustment
Received | Reçu le
2024-07-22
City of Ottawa | Ville d'Ottawa
Comité de dérogation

Dear Mr. Bellemare,

Fotenn Planning + Design (Fotenn) has been retained by Sabrina Mtanos (the "Owner") to prepare a Planning Rationale in support of a Minor Variance application at 482 Preston Street, Ottawa (the "subject property"). The Minor Variance application is required to provide an outdoor commercial patio within 30 metres of a residential zone, at a height above ground level greater than 2 metres, and to permit amplified sound on the outdoor commercial patio.

The original application (File No. D08-02-24/A-00064) was adjourned sine die, during the May 1, 2024 Panel 1 Committee of Adjustment meeting, due to amendments to the requested variance. The requested relief, noted below, is broadly the same as the original Minor Variance application. Relief item #1 has been amended to identify that the provided screening will be 1.72 metres in height, whereas 2.0 metres is required.

Further, a copy of a requested Municipal Freedom of Information and Protection of Privacy Act request has been provided to identify that by-law officers have not ticketed the property for noise violations related to the commercial patio. Members of the public raised concerns about by-law infractions relating to sound amplification on the patio. Ideally, the MFIPPA report will confirm that this has not been the case over the course of the period the patio has been active.

Finally, in the interim between adjournment and resubmission, both the Dalhousie Community Association and Councillor Troster's office have been provided with the opportunity to discuss the application. Neither party requested a meeting to discuss the application.

The specific relief requested is as follows :

1. Permit an outdoor commercial patio within 14.1 metres of a residential zones with a 1.72 metre high screen, where as Section 85(3) of the Zoning By-law does not permit an outdoor commercial patio within 30 metres of a residential zone without a 2 metre high screen;
2. Permit an outdoor commercial patio at an elevation of 5.21 metres above ground level in the TM zone, where as Section 85(6) does not permit an outdoor commercial patio to be located at an elevation higher than 2 metres above ground level in a TM zone; and

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3. Permit amplified sound on a commercial patio within 14.1 metres of a residential zone, whereas Section 85(3) of the Zoning By-law does not permit amplified sound on a commercial patio within 30 metres of a residential zone.

As detailed in this report, variances #1 and #2 above were previously approved by the Committee in 2022. One of the conditions of approval was that the patio would not be permitted amplified music, which was already prohibited by Section 85(3) of the Zoning By-law. Variance #3 above seeks to vary from Section 85(3) to permit amplified sound on the commercial patio. Despite previous approvals, as variance #3 would run counter to the conditions of the original approval, in an abundance of caution, this application seeks to permit the same patio as originally approved with the additional permission for amplified sound.

Please find enclosed the following materials in support of the application :

- / Completed application forms;
- / This cover letter and Planning Rationale;
- / Architectural Package, dated July 26, 2021, provided by Urban Keios;
- / Noise Study, dated February 9, 2024, provided by State of the Art Acoustik Inc.;
- / A copy of the previous Minor Variance approval, file number D08-02-21/A-00083;
- / Survey, February 12, 2020, provided by Annis O'Sullivan, Vollebakk;
- / By-law Request for Service Action Taken Detail Summary; and
- / A cheque in the amount of \$675.00, made payable to the City of Ottawa.

Sincerely,



Tyler Yakichuk, MCIP RPP
Planner



Jacob Bolduc, MCIP RPP
Associate

1.0 Introduction

Fotenn Planning & Design, acting as agents on behalf of Avenue North Realty Inc., is pleased to submit this Planning Rationale in support of the enclosed Minor Variance application for the lands located at 482 Preston Street in the City of Ottawa.

1.1 Application

The Owner is seeking relief from Section 85 of the City of Ottawa Zoning By-law (2021-406), relating to the establishment of an outdoor commercial patio. The following application is required:

/ Application #1 – **Minor Variance**

- Permit an outdoor commercial patio within 14.1 metres of a residential zones with a 1.72 metre high screen, where as Section 85(3) of the Zoning By-law does not permit an outdoor commercial patio within 30 metres of a residential zone without a 2 metre high screen;
- Permit an outdoor commercial patio at an elevation of 5.21 metres above ground level in the TM zone, whereas Section 85(6) does not permit an outdoor commercial patio to be located at an elevation higher than 2 metres above ground level in a TM zone; and
- Permit amplified sound on a commercial patio within 14.1 metres of a residential zone, whereas Section 85(3) of the Zoning By-law does not permit amplified sound on a commercial patio within 30 metres of a residential zone.

As identified in the following section – Application History, the subject property has previously had a Minor Variance approved to permit an outdoor commercial patio within 14.1 metres of a residential zone and 5.21 metres above ground level. However, a condition of the previous Minor Variance was to prohibit amplified sound on the commercial patio. In the event that approval of this Minor Variance application would place the subject property in contravention of the conditions of the previously approved Minor Variance, out of an abundance of caution, we are requesting the same relief as the previous application. Should the Committee find it unnecessary to reapply for the already permitted relief, those variances may be struck from the requested variances.

1.2 Application History

In April 2022 a Minor Variance (D08-02-21/A-00083) was granted to the Owner to construct a 115 square metre outdoor rooftop commercial patio to accommodate approximately 30 people and operate in connection with the Avenue Cafe, which is located on the ground floor. The requested relief was as follows:

- / To permit an outdoor commercial patio to be located 5.21 metres above the existing grade, whereas the By-law permits a maximum height of 2.0 metres for an outdoor patio above the existing grade; and
- / To permit an outdoor commercial patio to be located within 30 metres of a lot in a residential zone (westerly limit to be 14.1 metres), whereas the By-law prohibits outdoor patios in any yard or facing or abutting a residential zone or abutting lane facing or abutting residential zone unless it is located a minimum of 30 metres from a residential zone.

The Committee of Adjustment authorized the permitted variances, subject to the following conditions:

- / The location and size of the patio will be in accordance with the patio floor plan filed, Committee of Adjustment date-stamped April 21, 2022.
- / All lighting on the patio will be subdued, unobtrusive and properly shielded to avoid any spillover light with sharp cutoffs.
- / All sound reproduction amplified or live music on the patio is prohibited, at any time.
- / The patio hours of operation are limited to 3 p.m. to 11 p.m., seven days a week.

- / The patio is permitted to operate from April 1st to October 31st. The installation of a two-metre high wood privacy screen backed with plexiglass on the south and west sides of the patio, in accordance with recommendations of the noise study and with the plans on file

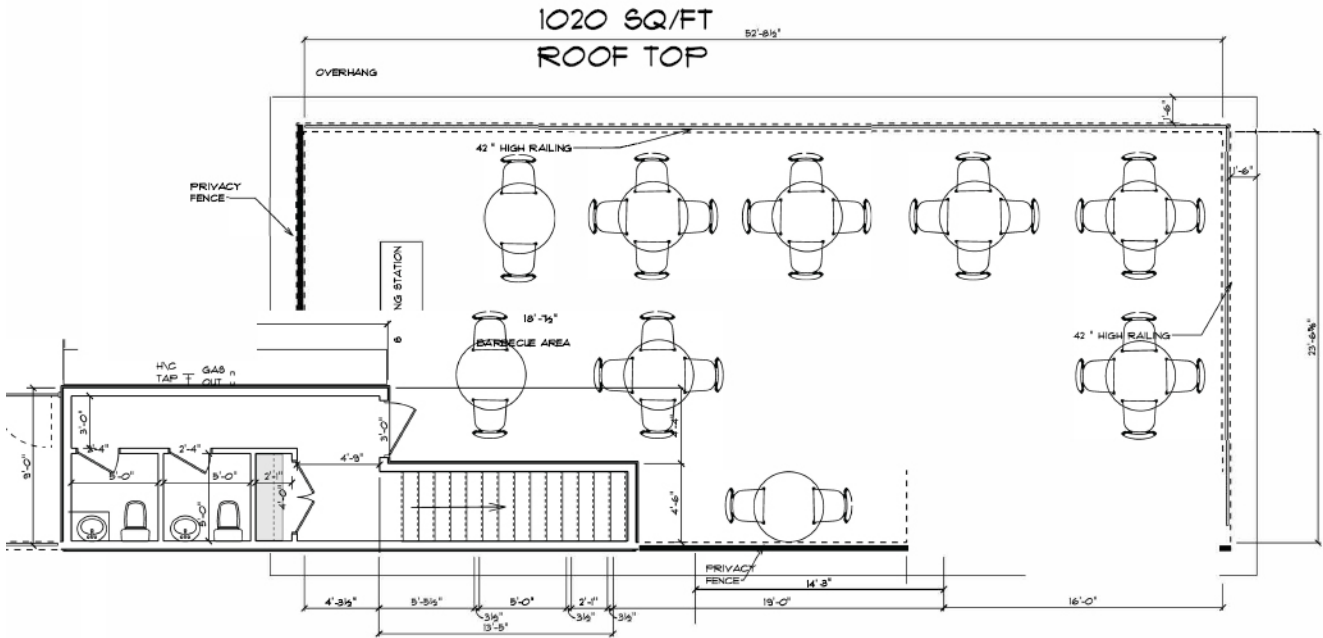


Figure 1: Floor Plan of the commercial patio, provided as part of the April 2022 Committee of Adjustment Minor Variance application.

2.0 Site and Surrounding Context

2.1 Subject Property

The subject property, municipally known as 482 Preston Street, is located in the Somerset Ward (Ward 14) of the City of Ottawa. The subject property has total area of 232.18 square metres and frontages on the west side of Preston Street and the south side of Adeline Street. The subject property is presently occupied with a two-storey building that includes a cafe at grade and a real estate company on the second floor. Additionally, a commercial patio is located on the roof of the building, which is associated with the cafe on the ground floor.

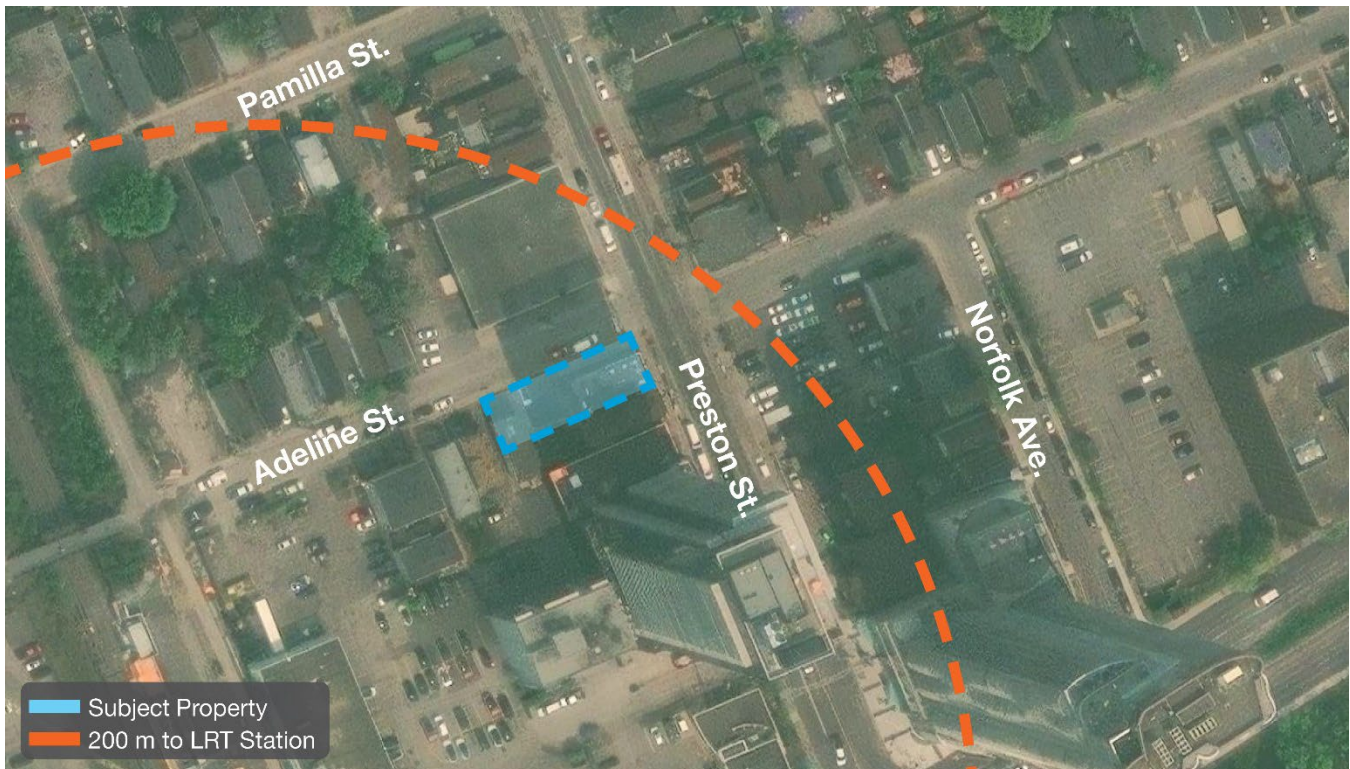


Figure 2: Aerial image of the subject property and the surrounding area.

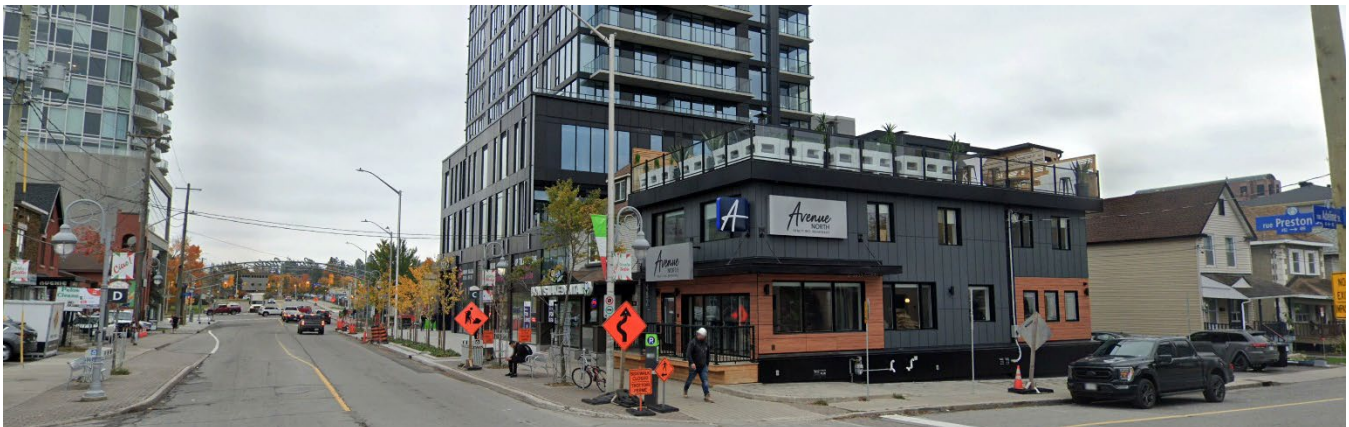


Figure 3: Street view of the subject property looking south-east at the corner of Preston Street and Adeline Street.

2.2 Surrounding Context

The subject property is located in the 'Little Italy' community, which is an area that is characterized by a mix of uses. The surrounding uses can be described as follows:

North

North of the subject property, along Preston Street, are a variety of commercial uses in single and two storey units. Uses include restaurants, offices, and retail. On streets adjacent to Preston Street, the use is primarily residential, in the form of low-rise units. Building types range from single detached dwellings to low-rise apartment buildings.



Figure 4: Street view looking north from the subject property on Preston Street.

West

West along Adeline Street are residential units, most of which are single detached dwellings. Further west, beyond the Trillium line are a number of high-rise towers, including the SoHo Champagne (111 Champagne Avenue South) and the Envy Little Italy (105 Champagne Avenue South). Additional uses in the area include parkland (Tremblay Park), as well as commercial, institutional, and the Carling LRT station.



Figure 5: Street view looking west from the subject property on Adeline Street.

East

Immediately east of the subject property, along Adeline Street, are a mix of dwelling units, ranging from single detached to low-rise apartment. Beyond Rochester Street are a collection of federal government high-rise office buildings. Additional uses in the area include surface parking lots associated with the office buildings and parkland.



Figure 6: Street view looking east from the subject property on Adeline Street.

South

Immediately abutting the subject property to the south is the residential building, Soho Italia, which is 30-storys in height. Located at Preston Street and Carling Avenue is the Claridge Icon building, which is 45-storys in height. South of Carling Avenue, the uses are primarily recreational, including Commissioners Park and Dows Lake with the associated pavilion area.



Figure 7: Street view looking east from the subject property on Preston Street.

3.0

Requested Minor Variance and Noise Study

The owner of the subject property is seeking a Minor Variance from Section 85(3) of the City of Ottawa Zoning By-law (2021-406), to permit an amplified audio system on a commercial patio within 14.1 metres of a residential zone. A previous Minor Variance has permitted the use of a commercial patio within 14.1 metres of a residential zone. Included as part of this application is a completed Noise Study, undertaken by State of the Art Acoustik Inc., and dated February 9, 2024.

The purpose of the Noise Study was to confirm that commercial patio could provide amplified sound while remaining below 50 decibels, as per the City of Ottawa Noise By-law (2017-255) and Environmental Noise Control Guidelines.

A summary of the findings are as follows:

“Using noise modelling and prediction software, we estimate the maximum noise level generated by patrons and loudspeakers on the patio. It was determined that the maximum sound pressure level (SPL) of noise generated by patrons on the patio to be approximately 48 dBA at the plane of window of the nearest residence, 88 Adeline Street. Therefore, the noise generated by patrons on the patio will likely meet or exceed the ENCG nighttime limit of 45 dBA. However, no noise mitigation measures are required if the patio does not operate past 2300 hours. Otherwise, we demonstrate that the noise impact at 88 Adeline Street and SoHo Italia due to patrons on the patio can be reduced below the 45 dBA nighttime limit by installing a sufficient sound barrier.”

The maximum SPL of the sound production devices that will be installed on the patio will need to meet the limits will be positioned to orientate the speakers to produce sound towards the interior of the patio as seen on the figure below.

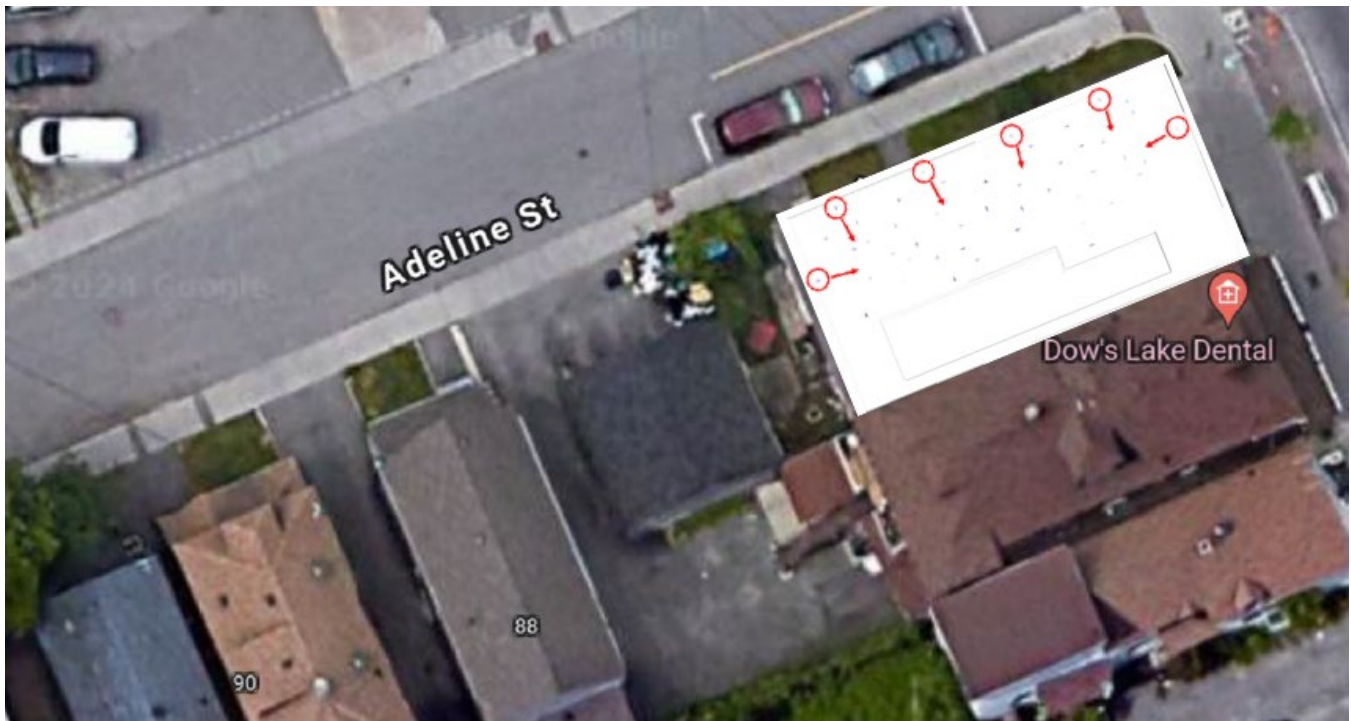


Figure 8: Layout of the location of the six loudspeakers (red circle) and their directionality (red arrow) for 482 Preston Street's patio.

Further noise reduction is possible should further mitigation strategies be employed. Currently, a wooden barrier exists on the west side of the rooftop patio, between the patio and 88 Adeline Street as identified in Figure 8. However, due to the low surface density, the barrier does not meet the City of Ottawa's requirements for noise barriers. This barrier was not considered for the predicted and unmitigated SPL. If the patio is to be used during the nighttime, the west side barrier may

be improved by installing plywood backing to the existing barrier such that its surface density increases to a minimum of 20 pounds per square foot. An additional barrier of 1.0m is also required on the roof of the building to the south of the patio to limit noise to the nearby residential tower. The mitigated predicted noise strategy has been modelled and presented the results as compared to the unmitigated strategy in Table 1.

Table 1: Results of Noise Study with and without mitigation barriers.

POR	Unmitigated SPL (dBA)	Mitigated SPL (dBA)	Will it meet 50 dBA (daytime limit)?	Will it meet 45 dBA (nighttime limit)?
Res 1	35.4	30.3	Yes	Yes
Res 2	48.0	40.6	Yes	Yes
Res 3	44.8	41.2	Yes	Yes
Res 4	42.7	40.4	Yes	Yes

Given that the commercial patio can be documented to not project noise above the accepted levels as outlined in the Noise By-law, a Minor Variance to allow an amplified sound system on a commercial patio, independent of its location to a residential zone, is appropriate as the Zoning By-law has no impact on the performance standard in question, namely amplified sound.

Further, strategies have been employed to mitigate sound levels present in the surrounding area. In addition to installing a 1.72 metre sound dampening wall, the patio has installed noise monitoring technology that identifies the sound level in real time. Further, the sound system have been placed on a timing system that automatically turns the music off at 11:00 pm.

4.0 Four Test of a Minor Variance

As per section 45(1) of the Planning Act, it is our professional opinion that the proposed development represents good planning and meets the four (4) tests as discussed below.

4.1 Does the Proposal Maintain the General Intent and Purpose of the Official Plan?

4.1.1 City of Ottawa Official Plan

As identified on Schedule B1 of the Ottawa Official Plan (Figure 9), the subject property is located in the Downtown Core transect and designated Mainstreet Corridor. Within the Downtown Core, it is anticipated that the Transect will continue to develop as a healthy 15-minute neighbourhood within a highly mixed-use environment where existing and new cultural assets are supported, including those that support music and nightlife (5.1.1.2).

The established an outdoor commercial patio contributes the range of uses in the surrounding area and provides compatible employment opportunities in an area of mixed use and easily accessible to transit services (3.5.1).

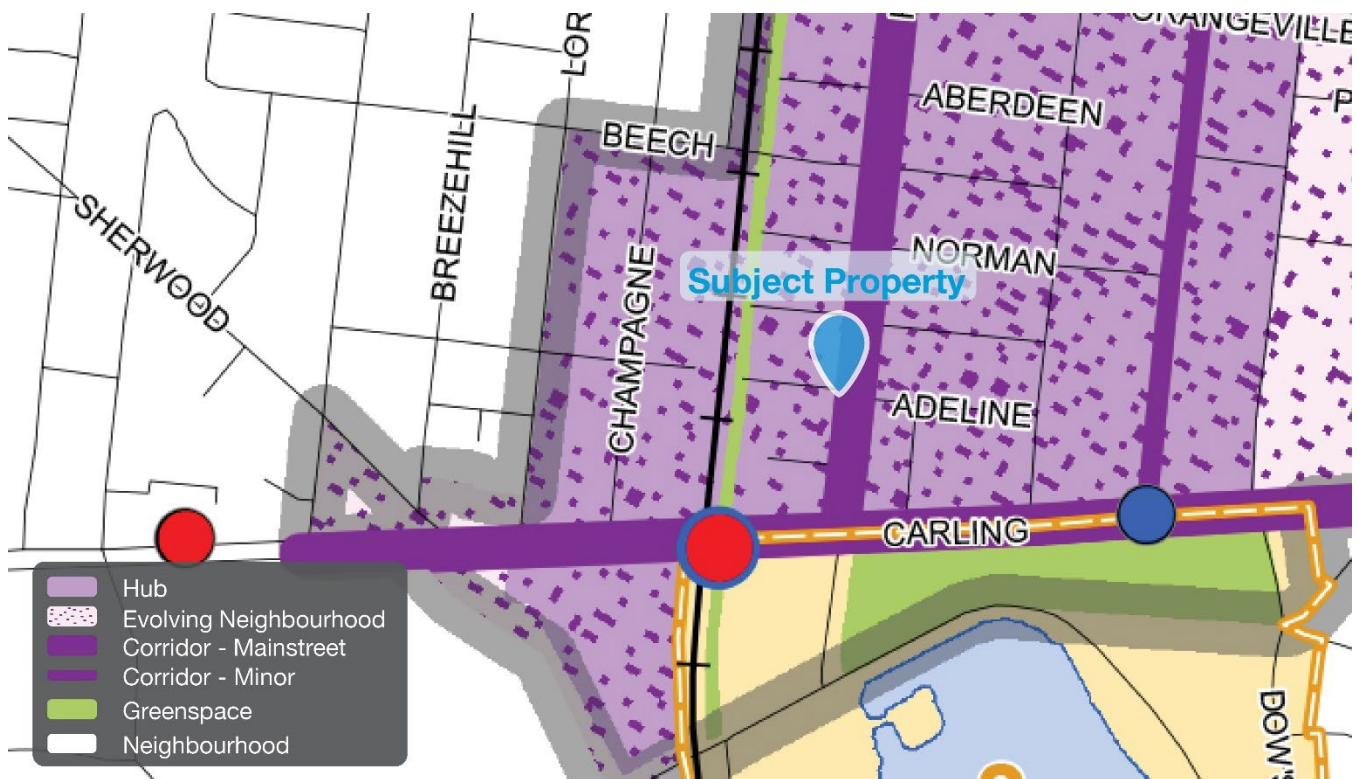


Figure 9: Schedule B1 – Downtown Core Transect, City of Ottawa Official Plan.

The Official Plan indicates that along Corridor designated streets non-residential uses are permitted that integrate into a dense, mixed-use environment where commercial (on upper floors) can contribute to the improvement of the 15-minute neighbourhood (6.2.1.3).

4.1.2 West Downtown Core Secondary Plan

The subject property is located in the Dow's Late Station District of the West Downtown Core Secondary Plan. The Secondary Plan identifies the area as, "a human scale place to attract businesses, families and facilitate social, economic and cultural interaction and innovation. The enhanced public realm throughout the area will allow for festivals such as the traditional Italian Week, to continuously celebrate the culture and people of this colourful district."



Figure 10: Dow's Lake Station District Schedule D - Character Areas, West Downtown Core Secondary Plan.

As identified on Schedule D – Character Areas of the Secondary Plan (Figure 10) the subject property is located in the Hub character area. Hubs are designated to provide a wide range of transit supportive uses (4.1.1). The Secondary Plan also notes that properties located east of the O-Train Line 2 corridor are identified to provide continuous retail and commercial uses and enhance the entrance to the Preston Mainstreet Corridor (4.1.1.4).

The proposed use of an amplified sound system on an already permitted commercial patio is consistent with the purpose and intent of the Ottawa Official Plan and West Downtown Core Secondary Plan. The proposed variance will allow for the use of an amplified sound system on a commercial patio within 14.1 metres of a residential zone. The commercial patio contributes to the mix of uses in an area identified for intensification. Further the use has proven to be compatible with the surrounding area in its two years since being approved in April 2022.

The Secondary Plan further confirms the appropriateness of the commercial patio, as the subject property is located in an area that is identified specifically for commercial uses and as an area that contributes to the existing character of Little Italy. The requested relief, to permit an amplified sound system further contributes to the vitality and commercial nature of the area. As per the established Noise By-law, the amplified sound system will not create any further noise impact that what is already permitted, in an area that is already characterized by a mix of uses that contribute to a higher relative amount of sound.

4.2 Does the Proposal Maintain the General Intent and Purpose of the Zoning By-law

The subject property is zoned Traditional Mainstreet, Urban Exception 86 – TM[86]. The purpose of the zone is as follows:

- / Accommodate a broad range of uses including retail, service commercial, office, residential and institutional uses, including mixed-use buildings but excluding auto-related uses, in areas designated Traditional Mainstreet in the Official Plan;
- / Foster and promote compact, mixed-use, pedestrian-oriented development that provide for access by foot, cycle, transit and automobile;
- / Recognize the function of Business Improvement Areas as primary business or shopping areas; and
- / Impose development standards that will ensure that street continuity, scale and character is maintained, and that the uses are compatible and complement surrounding land uses.

Permitted uses include both uses present on the subject property, office and restaurant.

The Urban Exception provides additional uses, hotel and place of assembly, as well as providing a definition for restaurant, full service.

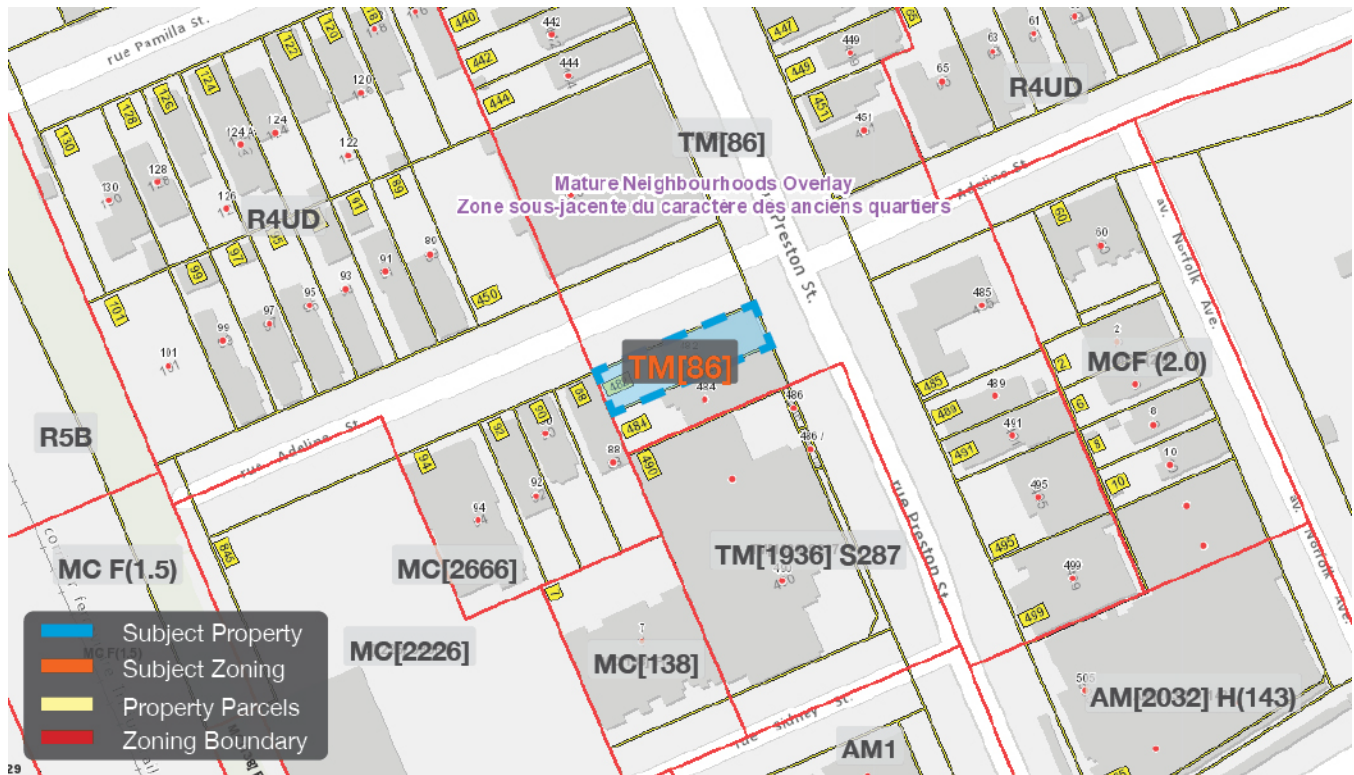


Figure 11: Zoning map of the subject property and the surrounding area.

The following table provides relevant zoning provisions as they pertain to the subject property:

Table 2: Zoning provisions for the subject property

Provision	Required	Provided / Proposed	Compliance
Minimum Lot Area	No Minimum	232.18 square metres	Yes
Minimum Lot Width	No Minimum	7.62 metres	Yes
Interior Side Yard Setback	0 metres (Minimum)	0.54 metres	Yes
	3 metres (Maximum)	0.54 metres	Yes
Minimum Corner Yard Setback	3 metres	-0.66 metres (existing condition)	Yes
Minimum Rear Yard Setback	7.5 metres	14.1 metres	Yes
Building Height	6.7 metres (Minimum)	5.21 metres (existing condition)	Yes
	20 metres (Maximum)	5.21 metres (existing condition)	Yes
Outdoor Commercial Patio Distance from Residential Zone <i>(Approved Minor Variance)</i>	14.1 metres	14.1 metres	Yes (also subject of this application – see Section 1 of this report)
Outdoor Commercial Patio Elevation Height <i>(Approved Minor Variance)</i>	5.21 metres	5.21 metres	Yes (also subject of this application – see Section 1 of this report)
Outdoor Commercial Patio Amplified Audio System	Not Permitted	Yes	No
Minimum Parking Spaces	3	3	Yes

As identified on the above zoning table (Table 2), the subject property is compliant with all relevant provisions of the TM zone in terms of built form and use. Additionally, the existing development is compliant with required parking and location of the outdoor commercial patio.

The location of the patio was previously approved (file number D08-02-21/A-00083). As noted in the original decision, referencing the Staff Report:

“The Committee notes that the City’s Planning Report raises “no concerns” regarding the application, highlighting that: “The occupied portion of the patio is within the footprint of the subject building. The proposed patio overlooks Adeline Street and Preston Street and commercial properties in TM zone on the north and east, the roof of the mixed-use property in TM zone on the south, and the roof of the residential property in residential zone on the west at a distance of 14.1 metres.”

The decision also notes:

“The Committee finds that the requested variances maintain the general intent and purpose of the Zoning By-law because the proposal, subject to certain conditions, is compatible with the surrounding area.”

As previously noted, the decision includes the below condition of approval:

“3. All sound reproduction amplified or live music on the patio is prohibited, at any time.”

Therefore, as there are no changes to the location of the patio, it is Fotenn's position that the only change is the request to permit amplified sound on the patio.

Section 85 of the Zoning By-law regulates commercial patios, including the location and use thereof, generally as they relate to proximity to residential areas and the maintenance of other required elements such as parking. The purpose of these provisions is to regulate and mitigate for potential impacts, especially on neighbouring residential areas. Amplified sound is already regulated by the City of Ottawa Noise By-law (2017-255), specifically Section 4, which specifies under subsection 10 that "Assessment of noise complaints may be undertaken at the point of reception of the noise for the purposes of confirming a violation" under the by-law. Subsection (6) specifically states that :

"No person shall operate or use or cause to be operated or used any sound reproduction device originating from or in connection with the operation of any commercial establishment between 0700 hours and 2300 hours of the same day, the noise from which sound reproduction device when measured in any business, dwelling house, apartment house, hotel or any other type of residence has an equivalent sound level (Leq) greater than 45 dB(A)."

In support of the proposal, the applicant prepared a Noise Study to evaluate the potential for impacts on the surrounding residential community. The analysis concludes that through the use of mitigating noise barriers and other measures, the combined presence of both patrons and loudspeakers can meet the City's environmental noise control guidelines. The report details that noise indicators and other tools can help the business owner regulate the noise to ensure they are not contravening the Noise By-law limits.

It is the responsibility of the operator of the patio to ensure noise on the patio, generated by either patrons or amplified sound, meets the Noise By-law. The restriction on amplified sound in the Zoning By-law is therefore unnecessary, if it can be demonstrated, as per the submitted Noise Study, that the anticipated noise levels can be properly mitigated. The proposed patio generally meets the intent of the Zoning By-law, and any potential impacts associated with the use of amplified sound are already regulated through the Noise By-law.

4.3 Is the Proposal Desirable for the Appropriate Development or Use of the Land

As noted in Section 4.1 of this Rationale, both the Ottawa Official plan and Secondary Plan have identified the subject property to be located in an area for a high level of intensification of a mixed-use nature. The existing restaurant and office uses contribute to the vitality and mixed-use nature of the 15-minute neighbourhood that has been established in the Little Italy community. Further, the outdoor commercial patio makes efficient use of a property parcel that would otherwise be too small to provide an at-grade patio.

Under the assumption that the Noise By-law is met, the requested variance to provide amplified sound on the outdoor commercial patio is an appropriate use of the land as it improves the overall experience of patrons using the patio while not imposing further noise impacts on the surrounding area beyond what is permitted (night time limit of 45 decibels) in any other zone.

4.4 Is the Proposal Minor in Nature

The requested Minor Variance does not inhibit the existing development from meeting all other provisions within the Zoning By-law and will continue to allow the subject property and neighbouring properties to develop in a manner that is consistent with the built form and planned uses of the surrounding area. Nor does the requested Minor Variance propose any site alteration.

The proposed Minor Variance looks to provide an improved experience on an outdoor commercial patio in a neighbourhood that is characterized by similar uses in the form bars and restaurants that provide commercial patios at-grade. Further, based on the submitted Noise Study, the proposed amplified sound is not expected to generate any undue impacts on neighbouring properties, being consistent with the ambient sound of existing patrons, and will have the maximum permitted sound levels regulated by the established Noise By-law.

Therefore, the proposed Minor Variance is minor in nature.

5.0 Conclusion

The proposed Minor Variance represents an appropriate and orderly extension of the existing outdoor commercial patio. It is our professional planning opinion that the proposed Minor Variance application good planning as:

- / The proposal conforms to the Provincial Policy Statement;
- / The proposal conforms to the policies and objectives of the Ottawa Official Plan and the West Downtown Core Secondary Plan;
- / The proposal meets the intent of the City of Ottawa Comprehensive Zoning By-law; and
- / The proposed Minor Variance meets the four tests, as set out in the Planning Act.

Sincerely,



Tyler Yakichuk, MPlan
Planner



Jacob Bolduc, MCIP RPP
Associate