



**COMMITTEE OF ADJUSTMENT
OF THE CITY OF OTTAWA**

**DECISION
MINOR VARIANCE
PERMISSION**

(Section 45 of the *Planning Act*)

File No.: D08-02-21/A-00083
Owner(s): Sabrina Mtanos
Location: 482 Preston Street
Ward: 14 - Somerset
Legal Description: Part of Lot 1541, Preston West, Reg. Plan 38
Zoning: TM[86]
Zoning By-law: 2008-250

Notice was given and a public hearing was held on **May 19, 2021 and April 20, 2022**, as required by the *Planning Act*.

PURPOSE OF THE APPLICATION:

In May 2021, the Committee of Adjustment adjourned this application to allow the Owner time to complete a noise study and the Owner now wants to proceed with the application as originally submitted.

The Owner wants to construct a 115 square metre outdoor rooftop commercial patio which will accommodate 30 persons and will be operated in connection with the Avenue Café which is located on the ground floor.

RELIEF REQUIRED:

The Owner requires the Authority of the Committee for Minor Variances from the Zoning By-law as follows:

- a) 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.
- b) 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 application indicates that the Property is not the subject of any other current application under the *Planning Act*.

PUBLIC HEARING:

Prior to the Hearing on May 19, 2021, the Committee received a request from Ainsley Dunstone, Agent for the Owner, to adjourn the application. At the Hearing, Mr. Dunstone advised that his client would be undertaking a noise study and were therefore requesting that the application be adjourned *Sine Die*. The Committee requested a copy of the study be made available to them as well as the neighbours who had submitted comments of concern.

With the concurrence of all parties the application was adjourned *Sine Die*.

At the renewed Hearing on April 20, 2022, the Chair administered an oath to Mr. Dunstone who confirmed that the statutory notice posting requirements were satisfied. Mr. Dunstone provided the Committee with a brief presentation which outlined the findings of the noise study undertaken by the applicant.

Masha Wakula of the City's Planning, Real Estate and Economic Development Department stated she had no concerns with the application.

DECISION AND REASONS OF THE COMMITTEE: APPLICATION GRANTED

The Committee considered any written and oral submissions relating to the application in making its Decision.

The Committee has the power to authorize a minor variance from the provisions of the Zoning By-law if, in its opinion, the application meets all four requirements under subsection 45(1) of the *Planning Act*. It requires consideration of whether the variance is minor, is desirable for the appropriate development or use of the land, building or structure, and whether the general intent and purpose of the Official Plan and the Zoning By-law are maintained.

Based on the evidence, the Committee is satisfied that the requested variances meet all four requirements under subsection 45(1) of the *Planning Act*.

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 Committee also notes that no evidence was presented that the variances would result in any unacceptable adverse impact on neighbouring properties.

Considering the circumstances, the Committee finds that, because the proposal fits well within the context of Preston Street, subject to certain conditions, and will accommodate the expansion of a business without compromising the streetscape, the requested variances are, from a planning and public interest point of view, desirable for the appropriate use of the land, building or structure on the property, and relative to the neighbouring lands. The Committee also finds that the requested variances maintain the general intent and purpose of the Official Plan because a restaurant is a permitted use under the Traditional Mainstreet designation of the subject property, and the proposal respects the character of the area. In addition, 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. Moreover, the Committee finds that the requested variances are minor because they will not create any unacceptable adverse impact on abutting properties or the neighbourhood in general.

The Committee therefore authorizes the requested variances, **subject to the following conditions:**

1. 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.
2. All lighting on the patio will be subdued, unobtrusive and properly shielded to avoid any spillover light with sharp cutoffs.
3. All sound reproduction amplified or live music on the patio is prohibited, at any time.
4. The patio hours of operation are limited to 3 p.m. to 11 p.m, seven days a week.
5. The patio is permitted to operate from April 1st to October 31st.
6. 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.

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 **May 19, 2022**, 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 OLT 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 individuals, corporations and public bodies may appeal Decisions in respect of applications for consent to the OLT. A notice of appeal may not be filed by an unincorporated association or group. However, a Notice of Appeal may be filed in the name of an individual who is a Member of the Association or group on its behalf.

Please note that there are no provisions for the Committee of Adjustment or the OLT 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.

**DECISION SIGNATURE PAGE
PAGE DE SIGNATURE DE LA DÉCISION**

File No. / Dossier n°: D08-02-21/A-00083
Owner(s) / Propriétaire(s): Sabrina Mtanos
Location / Emplacement: 482 Preston Street

We, the undersigned, concur in the decision and the reasons set out by the Committee of Adjustment.

Nous, soussignés, souscrivons à la décision et aux motifs rendus par le Comité de dérogation.

“John Blatherwick”

**JOHN BLATHERWICK
VICE-CHAIR / VICE-PRÉSIDENT**

“Stan Wilder”

**STAN WILDER
MEMBER / MEMBRE**

“Heather MacLean”

**HEATHER MACLEAN
MEMBER / MEMBRE**

“Bonnie Oakes Charron”

**BONNIE OAKES CHARRON
MEMBER / MEMBRE**

“Michael Wildman”

**MICHAEL WILDMAN
MEMBER / MEMBRE**

This is a true copy of the Decision of the Committee of Adjustment of the City of Ottawa.

Celle-ci est une copie conforme de la décision rendue par le Comité de dérogation de la Ville d'Ottawa.

Date of Decision / Date de la décision
April 29, 2022/ 29 avril 2022



Michel Bellemare
Secretary-Treasurer / Secrétaire-trésorier