

**DECISION
MINOR VARIANCE**

Date of Decision:	August 30, 2024
Panel:	1 - Urban
File No.:	D08-02-24/A-00064
Application:	Minor Variance under section 45 of the <i>Planning Act</i>
Applicant:	Sabrina Mtanos
Property Address:	482 Preston Street
Ward:	14 – Somerset
Legal Description:	Part of Lot 1541, Registered Plan 38
Zoning:	TM [86]
Zoning By-law:	2008-250
Heard:	August 21, 2024, in person and by videoconference

APPLICANT'S PROPOSAL AND PURPOSE OF THE APPLICATION

- [1] On May 1, 2024, the Committee adjourned the scheduled hearing of the application to allow the Owner time to consult with the community.
- [2] The Applicant wants to provide amplified sound on an outdoor, rooftop, commercial patio, as shown on plans filed with the Committee.
- [3] In April 2022, the Committee granted a minor variance application (D08-02-21/A-00083) to permit the outdoor, rooftop, commercial patio, 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 3:00 p.m. to 11:00 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.
- [4] The Applicant is now requesting further relief to permit amplified sound on the existing patio and to permit a lower privacy screen.

REQUESTED VARIANCES

- [5] The Applicant requires the Committee's authorization for minor variances from the Zoning By-law as follows:
- a) To permit outdoor commercial patio with a 1.72-metre-high screen facing the residential zone, whereas the Zoning By-law requires that commercial patios within 30 metres of residential zones must be screened from that zone by a structure, screen or wall that is at least 2 metres in height.
 - b) To permit an outdoor commercial patio to be located 5.21 metres above the existing grade, whereas the By-law requires outdoor commercial patios to be no higher than 2 metres above ground level.
 - c) To permit amplified sound on a commercial patio within 14.1 metres of a residential zone, whereas the Zoning By-law does not permit amplified sound on a commercial patio within 30 metres of a residential zone.
- [6] The property is not the subject of any other current application under the *Planning Act*

PUBLIC HEARING

Oral Submissions Summary

- [7] Tyler Yakichuk, Agent for the Applicant, provided a slide presentation, a copy of which is on file with the Secretary-Treasurer and available from the Committee Coordinator upon request. Following the adjournment of the scheduled hearing of the application, Mr. Yakichuk explained that he had reached out to the Dalhousie Community Association and the Ward Councillor's office for consultation but was unable to make contact. In a response to a question from the Committee, Mr. Yakichuk confirmed he was aware the property has been in violation of the Committee's previous conditions as well as the Zoning By-law.
- [8] Jacob Bolduc, also acting as Agent for the Applicant, acknowledged the community's concerns over the proposal and clarified that, although the Applicant had received a notice of violation under the Zoning By-law, there had been no issued tickets in violation of the noise By-law. Mr. Bolduc expressed that the Applicant intended to better control the noise level on site in the future by

implementing the measures recommended in the noise study filed with the application, including a volume control system which would alert the owners if the sound exceeded the permitted decibel level.

- [9] In a response to a question regarding the height of the screen, Mr. Bolduc explained that the requested 1.72 metres followed the recommendations of the noise study but did not comply with the minimum height required under the Zoning By-law. He stated that he could not confirm if a screen had been installed in compliance with condition (6) of the Committee's previous decision.
- [10] Mr. Yakichuk noted that the existing screen had been installed in April 2024, as a replacement, but could not confirm the height of the previous screen.
- [11] Mr. Yakichuk explained that the screen will mitigate sound below 45 decibels. In response to questions from the Committee, he clarified that, to his knowledge, there had been no other infractions in violation of the remaining conditions of the Committee's previous decision.
- [12] In response to a question from the Committee regarding public consultation with area residents, Mr. Bolduc elaborated that the Councillor's office had initially offered to assist in retrieving any associated violations pertaining to the subject site but had not provided an additional response. He also noted that the Dalhousie Community Association denied their request for discussion. In a response to a question from the Committee, Mr. Bolduc explained the function of the proposed noise monitor as recommended in the noise study. He noted that he was not aware of existing noise monitors in the city.
- [13] The Committee also heard oral submissions from the following individuals:
- E. Hanlon, resident, presented a video and provided a slide presentation on behalf of M. Isaacs, a copy of which is on file with the Secretary-Treasurer and available from the Committee Coordinator upon request. In a response to a question from the Committee, Ms. Hanlon confirmed that disruptive sound had been heard past 1:30 a.m. after the installation of the screen in April.
 - N. Bernardi, resident, highlighted that the Owner had not made efforts to mitigate noise levels after receiving letters of concern. She expressed that the noise level is excessive and has negatively affected her life.
 - S. Schmidt, resident, highlighted that the background noise sampling had been conducted in 2022 and had not been measured along Adeline Street due to construction that had since been completed. He also highlighted that the patio operates as a private facility and is not open to public admission.
 - K. Moreau, resident, expressed concerns over the property's private events, and the volume of the sound and bass. She noted that the property is referred to as a restaurant or social place but is not available to the public. Ms.

Moreau also noted that they had not been contacted by the Applicant since the adjournment.

- D. MacPherson, resident, highlighted that he had his first child in January and that the windows of the child's bedroom rattle during the times the patio is in use. expressed concerns over the volume of the sound and bass, the request for amplified noise, and the effect of the sound barrier for those that live above it. He also noted that he had not been contacted by the Applicant or the Community Association since the adjournment.
- M. Isaacs, resident, expressed concerns over the Zoning and Noise By-law violations, the violations of the Committee's previous decision, and the volume of the sound from the property. She also indicated she had not been contacted by the Applicant since the adjournment.

[14] Mr. Bolduc confirmed that the noise study had been updated in February of 2024, for the purposes of supporting this application, however it reused on the original sound measurements which were conducted in January 2022. In response to a question from the Committee, Ms. Linker explained that the City's Infrastructure Engineering department reviews noise studies in compliance with City guidelines. She noted that Staff did not request an updated noise study upon review of the application.

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

DECISION AND REASONS OF THE COMMITTEE: APPLICATION REFUSED

Application Must Satisfy Statutory Four-Part Test

[16] 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.

Evidence

[17] Evidence considered by the Committee included all 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 cover letter/planning rationale, plans, access to information report, noise study, petition of support, photo of the posted sign, and a sign posting declaration.

- City Planning Report received August 15, 2024, with no concerns; received April 24, 2024, with no concerns.
- Rideau Valley Conservation Authority email received August 19, 2024, with no objections; received April 29, 2024, with no objections.
- Hydro Ottawa email received August 19, 2024, with comments; received April 23, 2024, with comments.
- Ontario Ministry of Transportation email received August 13, 2024, with no comments.
- By-Law and Regulatory Services email received August 19, 2024, with concerns.
- A. Lebeau, resident, email received August 7, 2024, in opposition.
- R. Ghasemi, resident, email received August 7, 2024, in opposition.
- A. Templeman, resident, email received August 8, 2024, in opposition.
- R. and C. Dinelle, residents, email received August 8, 2024, in opposition.
- B. Colby, resident, email received August 8, 2024, in opposition.
- A. Storie, resident, email received August 9, 2024, in opposition.
- P. Cianci, resident, by phone August 9, 2024, in opposition; by phone April 19, 2024, in opposition.
- C. Boutcher, President of the Dalhousie Community Association, email received August 13, 2024, in opposition.
- N. Bernardi, resident, email received August 13, 2024, in opposition; received April 29, 2024, in opposition.
- M. Isaacs, resident, email received August 13, 2024, in opposition; received April 26, 2024, in opposition.
- S. Gauthier and H. Ruck, residents, email received August 19, 2024, in opposition.
- T. Flesher, resident, email received August 19, 2024, in opposition.
- E. Myles, resident, email received August 19, 2024, in opposition.
- E. Hanlon, resident, email received August 19, 2024, in opposition; received May 17, 2024, with concerns; received April 30, 2024, in opposition.

- Councillor Ariel Troster, Ward 14, email received August 20, 2024, in opposition; received April 19, 2024, in opposition.
- S. Schmidt, resident, email received August 20, 2024, in opposition; received April 30, 2024, in opposition.
- C. MacDonald, resident, email received August 20, 2024, in opposition.
- R. M. Slater, resident, email received August 20, 2024, in opposition.
- Sydney Towers Co-op, email received August 20, 2024, in opposition.
- J. Hamilton, resident, email received August 20, 2024, in opposition.
- K. Richards, resident, email received August 20, 2024, in opposition.
- V. Krascsenics, resident, email received August 21, 2024, in opposition.
- M. Sharpe, resident, email received August 21, 2024, in opposition.
- R. Snow, resident, email received April 15, 2024, in opposition.
- F. Cianci, resident, by phone April 19, 2024, in opposition.
- B. Hendry, resident, email received April 29, 2024, in opposition.
- R. Boutilier, resident, email received April 30, 2024, in opposition.
- K. Moreau, resident, email received April 30, 2024, in opposition.
- E. Hanlon et al., neighbourhood petition with 35 signatures, email received April 30, 2024, in opposition.
- J. Larocque and J. Baldwin, residents, email received April 30, 2024, in opposition.
- J. Blagdon, resident, email received April 30, 2024, in opposition.
- D. MacPherson, resident, email received May 1, 2024, in opposition.

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 variances meet all four requirements under subsection 45(1) of the *Planning Act*.

- [20] The Committee notes that the City's Planning Report raises "no concerns" regarding the application, highlighting that: "The noise study confirms that patrons and the proposed type of speaker, positioned as outlined in the study and oriented towards the subject building façade, can exist while complying with the daytime limit (between 7:00am and 11:00pm). If the patio is to be used during nighttime hours (11:00pm to 7:00am), mitigation measures per the noise study will be required." However, the Committee also notes that the noise study's methodology may be inconsistent with how the property is allegedly currently being used, namely as a private event venue. The Committee further notes that on page six of the noise study, it states that no noise measurements were taken along Adeline Street due to construction occurring at that time.
- [21] The Committee finds that insufficient evidence was presented, such as a noise study with up-to-date measurements taken along Adeline Street demonstrating that the outdoor, rooftop, commercial patio with amplified sound could function without creating an undesirable condition for area residents. Without the submission of such a noise study, the Committee cannot conclude that, from a planning and public interest point of view, the requested variances are desirable for the appropriate development or use of the land, building or structure on the property, and relative to the neighbouring lands.
- [22] The Committee also finds that the requested variances do not maintain the general intent and purpose of the Official Plan because the proposal does not respect the character of the neighbourhood.
- [23] Additionally, the Committee finds that the requested variances do not maintain the general intent and purpose of the Zoning By-law, which is to establish separation between a commercial patio with amplified sound and the more sensitive residential zone.
- [24] Moreover, the Committee finds that the requested variances, both individually and cumulatively, are not minor because the proposal would cause an unacceptable adverse impact on abutting properties and the neighbourhood in general.
- [25] Failing all four statutory requirements, the Committee is unable to grant the application.
- [26] THE COMMITTEE OF ADJUSTMENT therefore does not authorize the requested variances.

Ann M. Tremblay
ANN M. TREMBLAY
CHAIR

John Blatherwick
JOHN BLATHERWICK
MEMBER

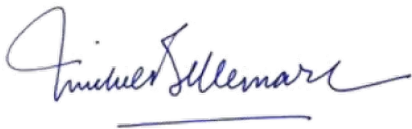
Simon Coakeley
SIMON COAKELEY
MEMBER

Arto Keklikian
ARTO KEKLIKIAN
MEMBER

Absent
SHARON LÉCUYER
MEMBER

Julianne Wright
JULIANNE WRIGHT
MEMBER

I certify this is a true copy of the Decision of the Committee of Adjustment of the City of Ottawa, dated **August 30, 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 **September 19, 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.

Committee of Adjustment
City of Ottawa
Ottawa.ca/CommitteeofAdjustment
cofa@ottawa.ca
613-580-2436



Comité de dérogation
Ville d'Ottawa
Ottawa.ca/Comitedederogation
cded@ottawa.ca
613-580-2436