

<p>3. ZONING BY-LAW AMENDMENT – 1385 WELLINGTON STREET WEST</p> <p>MODIFICATION AU RÈGLEMENT DE ZONAGE – 1385, RUE WELLINGTON OUEST</p>

COMMITTEE RECOMMENDATION

That Council approve an amendment to Zoning By-law 2008-250 for 1385 Wellington Street West to permit an outdoor commercial patio, and a temporary use outdoor commercial patio, as detailed in Document 2.

RECOMMANDATION DU COMITÉ

Que le Conseil approuve une modification au Règlement de zonage 2008-250 visant le 1385, rue Wellington Ouest, en vue de permettre l'installation d'une terrasse commerciale extérieure à usage temporaire et d'une terrasse commerciale extérieure, comme l'expose en détail le document 2.

DOCUMENTATION/DOCUMENTATION

1. Director's report, Planning Services, Planning, Infrastructure and Economic Development Department, dated 8 June 2017 (ACS2017-PIE-PS-0084)

Rapport de la Directrice, Service de la planification, Direction générale de la planification, de l'infrastructure et du développement économique, daté le 8 juin 2017 (ACS2017-PIE-PS-0084)
2. Extract of draft Minutes, Planning Committee, 27 June 2017

Extrait de l'ébauche du procès-verbal, Comité de l'urbanisme, le 27 juin 2017
3. Summary of Written and Oral Submissions, to be issued separately with the Council agenda for its meeting of 23 August 2017, as part of the Summary of Oral and Written Public Submissions for Items Subject to Bill 73 'Explanation Requirements'

Résumé des observations écrites et orales, à distribuer séparément avec l'ordre du jour de la réunion du 23 août 2017 du Conseil, comme faisant partie du Résumé des observations orales et écrites du public sur les questions assujetties aux « exigences d'explication » aux termes de la Loi 73.

**Report to
Rapport au:**

**Planning Committee / Comité de l'urbanisme
June 27, 2017 / 27 juin 2017**

**and Council / et au Conseil
July 12, 2017 / 12 juillet 2017**

**Submitted on June 8, 2017
Soumis le 8 juin 2017**

Submitted by

Soumis par:

Lee Ann Snedden,

Director / Directrice,

Planning Services / Service de la planification

**Planning, Infrastructure and Economic Development Department / Direction
générale de la planification, de l'infrastructure et du développement
économique**

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**Andrew McCreight, Planner II / Urbaniste II, Development Review Central /
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Ward: KITCHISSIPPI (15)

File Number: ACS2017-PIE-PS-0084

SUBJECT: Zoning By-law Amendment – 1385 Wellington Street West

OBJET: Modification au Règlement de zonage – 1385, rue Wellington Ouest

REPORT RECOMMENDATIONS

- 1. That Planning Committee recommend Council approve an amendment to Zoning By-law 2008-250 for 1385 Wellington Street West to permit an**

outdoor commercial patio, and a temporary use outdoor commercial patio, as detailed in Document 2.

2. That Planning Committee approve the Consultation Details Section of this report be included as part of the 'brief explanation' in the Summary of Written and Oral Public Submissions, to be prepared by the City Clerk and Solicitor's Office and submitted to Council in the report titled, "Summary of Oral and Written Public Submissions for Items Subject to Bill 73 'Explanation Requirements' at the City Council Meeting of 12 July 2017" subject to submissions received between the publication of this report and the time of Council's decision.

RECOMMANDATIONS DU RAPPORT

1. Que le Comité de l'urbanisme recommande au Conseil d'approuver une modification au Règlement de zonage 2008-250 visant le 1385, rue Wellington Ouest, en vue de permettre l'installation d'une terrasse commerciale extérieure à usage temporaire et d'une terrasse commerciale extérieure, comme l'expose en détail le document 2.
2. Que le Comité de l'urbanisme donne son approbation à ce que la section du présent rapport consacrée aux détails de la consultation soit incluse en tant que « brève explication » dans le résumé des observations écrites et orales du public, qui sera rédigé par le Bureau du greffier municipal et de l'avocat général et soumis au Conseil dans le rapport intitulé « Résumé des observations orales et écrites du public sur les questions assujetties aux 'exigences d'explication' aux termes du projet de loi 73 », à la réunion du Conseil municipal prévue 12 juillet 2017 à la condition que les observations aient été reçues entre le moment de la publication du présent rapport et le moment de la décision du Conseil.

EXECUTIVE SUMMARY

Assumption and Analysis

The Zoning By-law amendment recommendation permits a temporary use outdoor commercial patio, and an outdoor commercial patio subject to a holding symbol. The proposed patio is oriented towards the corner of Wellington Street and Western Avenue. The patio is limited in size with a seating area up to 20 square metres and will operate in association with a restaurant. The amendment primarily deals with the patio being

located within 19.0 metres of a residential zone, whereas a minimum of 30 metres is required when the patio is separated from the residential zone by structure, screen or wall that is two metres in height.

Public Consultation/Input

Councillor Leiper and the applicant organized a public open house, which was held on May 2, 2017. Approximately 30 individuals attended the meeting, and the applicant's consultant presented an overview of the proposal while opening the floor to questions and answers throughout. Staff attended the meeting and responded to questions concerning the application, process and next steps.

During the application review process, approximately 125 comments were submitted concerning the proposal. The majority of comments received expressed support for the proposed patio, and some simply asked to be kept informed. Approximately 20 submissions opposed the proposal.

RÉSUMÉ

Hypothèse et analyse

La recommandation de modification au Règlement de zonage vise à permettre l'installation d'une terrasse commerciale extérieure à usage temporaire et d'une terrasse commerciale extérieure soumise à un symbole d'aménagement différé. La terrasse proposée serait orientée vers l'angle de la rue Wellington et de l'avenue Western. Cette terrasse de superficie limitée disposerait d'un espace repas pouvant atteindre 20 mètres carrés et serait exploitée en association avec un restaurant. La modification concerne essentiellement la localisation de la terrasse, située à moins de 19,0 mètres d'une zone résidentielle, alors qu'une distance minimale de 30 mètres est requise lorsqu'une terrasse est séparée d'une zone résidentielle par une structure, un écran ou un mur d'une hauteur de deux mètres.

Consultation publique et commentaires

Le conseiller Leiper et le requérant ont organisé une réunion portes ouvertes, qui s'est déroulée le 2 mai 2017 et à laquelle une trentaine de personnes ont assisté. Le consultant dont les services ont été retenus par le requérant a présenté un aperçu du projet tout en invitant les participants à poser des questions. Des employés ont assisté à cette réunion et ont répondu aux questions concernant la demande, le processus devant être suivi et les prochaines étapes.

Au cours du processus d'examen de la demande, environ 125 commentaires ont été transmis au sujet de la proposition. La majorité de ces commentaires étaient en faveur de la terrasse proposée, et certains intervenants demandaient tout simplement à être tenus informés. Environ 20 commentaires reçus étaient défavorables au projet.

BACKGROUND

Learn more about [link to Development Application process - Zoning Amendment](#)

For all the supporting documents related to this application visit the [link to Development Application Search Tool](#).

Site location

1385 Wellington Street West

Owner

Dr. Byron Hyde, Property Owner

Applicant

Jeff Frost, Owner – The Wellington Diner (Restaurant)

Consultant

Teresa Thomas – Acacia Consulting & Research

Description of site and surroundings

The property, 1385 Wellington Street, is located on the northwest corner of Wellington Street and Western Avenue, in the West Wellington neighbourhood. The 445 square metres site is currently occupied by a restaurant (The Wellington Diner) and associated surface parking lot.

Wellington Street is a Traditional Mainstreet with a wide variety of uses along the corridor, including commercial and mixed-use buildings at various heights and density. The surrounding neighbourhood to the north and south of Wellington Street consists of low-rise residential housing.

Summary of requested Zoning By-law amendment proposal

The applicant is proposing to establish an outdoor commercial patio to be operated as part of the existing restaurant. The patio is oriented towards the corner of the site fronting Wellington Street and Western Avenue where landscaping currently exists.

The site is zoned TM11, Traditional Mainstreet, Subzone 11, which is a mixed-use zone allowing a broad range of residential and non-residential uses. Patios are permitted in operation with a restaurant, bar, place of assembly or nightclub, subject to Section 85 of the Zoning By-law. It should be noted, however, that the TM11 zone does not permit a bar or nightclub.

The applicant requested an amendment to the Zoning By-law to permit an outdoor commercial patio within 19.3 metres of a residential zone, whereas the by-law requires a minimum of 30 metres where the patio is screened and physically separated from the residential zone by a structure, screen or wall that is two metres or more in height so as to mitigate both light and noise from the patio.

The recommended amendment, as detailed in Document 2, includes:

- An outdoor commercial patio is subject to the following provisions:
 - An outdoor commercial patio, with a structure, screen or wall at least 2.0 metres in height, is permitted within 19.0 metres of residential zone.
 - Where there is a walkway/ramp providing access to the principal use, a structure, screen or wall is not required at that location.
 - An outdoor commercial patio is limited to a maximum seating area of 20 square metres.
- An outdoor commercial patio subject to holding symbol (-h) is required to satisfy the following prior to the holding symbol being lifted;
 - The owner enters into a restrictive covenant to address any potential issues, if necessary, such as hours of operation, music, lighting, number of seating, and details of the patio screening.
- Permit a temporary use outdoor commercial patio until November 1, 2018. The temporary patio is exempt from the holding symbol.

Brief history of proposal

This matter has never been considered by City Council. However, the proposed patio in question has been subject to two Committee of Adjustment (CofA) decisions, including one subsequent decision by the Ontario Municipal Board (OMB).

In 1997, the CofA refused an application for minor variance to permit the said patio within 20 metres of a residential zone. This decision was appealed to the OMB, and upon consideration of the evidence presented, the OMB also refused the proposal. The refusal included reasons such as noting that the evidence presented would result in a patio with 40-50 people, and with no visual or sound buffer in between the patio and residential property, unacceptable visual and noise impacts would be the result. The decision also noted impacts on privacy, and raised concerns about the elevation change with the patio situated at a higher height than the abutting residential lot overlooking the outdoor amenity area adjacent to the restaurant property. The question of a temporary patio for one year was raised at the hearing, and the OMB noted that it would not be fair to the objecting neighbours to place them in a situation in which they have to keep appearing before approval authorities to present their case against the use.

In 2009, another minor variance application was submitted to the CofA. This application was refused and noted that the owner's agent had failed to demonstrate sufficient change from the previous application to warrant reconsideration from the previous CofA and OMB decisions. No appeal was made to this decision. The department had no concerns with this application and noted the policy change to the Traditional Mainstreet designation, found in the City's current Official Plan. This designation encourages intensification and a mixed-use neighbourhood that is vibrant and provides for street level animation, such as patios, along with a range of uses that can co-exist.

As explained in the planning rationale section of this report, staff are of the opinion that the context has changed, both at the site and neighbourhood level, as well as in relation to City of Ottawa regulations affecting patios in general.

DISCUSSION

Public consultation

Notification and public consultation was undertaken in accordance with the Public Notification and Consultation Policy approved by Council for development applications.

Councillor Leiper and the applicant organized a public open house, which was held on May 2, 2017. Approximately 30 individuals attended the meeting. The applicant's

consultant presented an overview of the proposal while opening the floor to questions and answers throughout. Staff attended the meeting and responded to questions concerning the application, process and next steps.

During the application review process, approximately 125 comments were submitted concerning the proposal. Majority of the comments expressed support for the proposed patio, and some simply asked to be kept informed. Approximately 20 submissions were opposed.

For this proposal's consultation details, see Document 4 of this report.

Official Plan designation

The site is located within the Traditional Mainstreet designation as shown on Schedule B of the City's Official Plan.

The Wellington Street West Secondary Plan in Volume 2 of the Official Plan applies. Within this plan, the subject site is located within the traditional mainstreet designation and West Wellington policy area. This area values a high-quality pedestrian environment that provides for a public-friendly streetscape.

Other applicable policies and guidelines

The Urban Design Guidelines for Development along Traditional Mainstreets apply. The guidelines envision mainstreets as a lively mix of uses with development that is compatible and complimentary to its surroundings with an emphasis on the pedestrian realm.

Also applicable, are the Outdoor Patio Design Guidelines, which are intended to provide guidance on applications to establish outdoor patios. The guidelines cover specific design details such as lighting, fencing, planting, and signage for example. The guidelines also cover land use relationships and patio location considerations.

PLANNING RATIONALE

***Planning Act* and Provincial Policy Statement**

Section 2 of the *Planning Act* outlines those land use matters that are of Provincial interest, to which all City planning decisions shall have regard. The Provincial interests that apply to this site and proposal include:

- the orderly development of safe and healthy communities;

- the accessibility for persons with disabilities to all facilities, services and matters to which this *Act* applies;
- the protection of public health and safety; and
- the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians.

In addition, the *Planning Act* requires that all city planning decisions be consistent with Provincial Policy Statement (PPS), 2014; a document that provides further policies on matters of Provincial Interest related to land use development.

The recommended Zoning By-law amendment is considered consistent with the matters of Provincial interest as outlined in the *Planning Act* and is in keeping with the PPS, 2014 by promoting efficient development with a built form that contributes to an active community, and enhances the vitality and viability of mainstreets.

Official Plan Policies

This application has been reviewed under the consolidated Official Plan (2003) with regard for the Council approved amendments contained within Official Plan Amendment 150 (OPA 150). Amendments introduced by OPA 150 generally do not impact the proposal.

The site is designated Traditional Mainstreet (Section 3.6.3), which provides for a policy direction encouraging compact built forms and emphasizes street level animation with a lively mix of uses and pedestrian-friendly environments. Mainstreets shall optimize the use of land and provide a building format that encloses and defines the street edge and provides direct pedestrian access to the sidewalk.

In support of the traditional mainstreet policies, the urban design guidelines for development on traditional mainstreets can also be considered. The guidelines, with respect to this application, focus on a streetscape with animation and vibrancy. The streetscape should provide an area adjacent to storefronts for canopies, outdoor patios or special merchant displays to encourage street-level animation. Attractive public and semi-public outdoor amenity spaces can be achieved with green spaces with trees, pocket parks, courtyards, outdoor cafés, and seating for example.

The proposal is consistent with the traditional mainstreet policies by utilizing a landscaped portion of the site for a patio that would have the effect of contributing to the street level animation and pedestrian realm. The proposed patio is directly accessible

from the public sidewalk and an on site parking lot. Images of the existing patio location and potential street-level relationship are shown in Document 3.

Through quality urban design and street-level animation, Section 2.5.1 strives for the creation of lively community places with a distinctive character that will attract people and investment to the City. A small patio animating the corner of a commercial site that responds to the site design and further screens the rear parking area will positively contribute to the planned function and vibrancy of a traditional mainstreet. Compatibility is recognized as something that coexist with existing development without causing undue adverse impact on surrounding properties, and fits well within its context. The patio is limited to a 20 square metre seating area (approximately 24 patrons) and will provide screening in relation to the abutting residential properties. The policy also recognizes the importance of clearly defining and connecting public and private spaces. The proposed patio is defined by a low-laying brick wall with a pathway open to the public sidewalk, having the effect of being inviting and interactive with the mainstreet, but also clearly defined for its use. In addition to using this defined space as patio, screening will be provided along the patio at the rear and portions of the side to mitigate visibility, light and noise from surrounding residential properties. The proposed location of the screening (minimum 2.0 metres in height) is shown in Document 3.

Further supporting the intent of Section 2.5.1, the guidelines for Outdoor Commercial Patios encourage a number of positive attributes for incorporating a patio into the streetscape. The proposed patio responds to the guidelines by having clear signage for the business, a clearly defined seating area, the ability to incorporate existing landscaping, being screened and adequately separated from residential uses, and enhancing the street edge.

Section 4.11 can be applied to individual properties and provides direction on impacts between new and existing development. Context is key to evaluating compatibility and design. For instance, development needs to respect the privacy of outdoor amenity areas of adjacent residential units. The proposed patio requires a minimum 2.0-metre high structure, screen or wall between the patio and residential zone. The applicant has extended the screening location to minimize visibility of the patio from abutting residential properties, which in turn will help mitigate lighting and the perception of noise.

The Wellington West Street Secondary Plan applies, and the subject site is located within the Wellington West area of this plan. The policies associated with this area mainly focus on the built form and architecture for a few key sites, which does not

include 1385 Wellington. However, the overarching policy acknowledges that the area values a high-quality pedestrian environment, with a public-friendly streetscape.

Staff are satisfied that the recommended zoning details for the proposed outdoor commercial patio are consistent with the current Official Plan and OPA 150. From the street perspective, the patio (with screening) utilizes a portion of the site that is directly accessible from the public sidewalk and has the effect of contributing to the street-level animation and vibrancy and vitality of a traditional mainstreet. The use of the area for patio further screens the rear parking area and enhances the pedestrian realm. The small scale nature of the patio (20 square metres) in combination with the required screening and 19.0 metre separation from the nearest residential lot will not cause any adverse impacts to the residential properties. Wellington is a vibrant and active street, and the addition of small patio oriented towards the front corner of the site fits well in its context and is compatible with its surroundings.

Zoning By-law Intent

Section 85 of the Zoning By-law regulates outdoor commercial patios. Specific to this proposal is provision ((85)(3)(a)), which permits a patio that is at least 30 metres from a lot in a residential zone and is screened and physically separated from that same lot by a structure, screen or wall that is two metres or more in height so as to mitigate both light and noise from the outdoor commercial patio. It is important to note that the said "structure, screen or wall" is not required to be a noise wall or an acoustically engineered sound barrier. In simple terms, the requirement is for screening between the patio and residential zone. The intent, as stated, is to mitigate light and noise. Equally important is that the Zoning By-law is silent on the size of the patio; the same rules apply whether the patio is for 20 people or 100 people.

Drawing on the City of Ottawa Environmental Noise Control Guidelines, one must consider that people noise is specifically excluded from the definition of stationary noise sources, and as such noise deriving from people is not regulated by these guidelines. The guidelines, which are based on City, Federal and Provincial regulations, do speak to screening such as landscaping and recognize that while noise attenuation is negligible the effect of screening the noise source from people and neighbourhoods is known to have a profound effect on the perception of noise. With respect to the proposed patio, and intent of Section 85 of the Zoning By-law, the said structure, screening or wall is built on this premise regarding the perception of noise.

Despite the provisions noted above, there are instances throughout the urban area where smaller scale patios are permitted. In areas/sites zoned Local Commercial,

Subzone 1 (LC1), or within residential zones containing the Residential Neighbourhood Commercial Suffix (-c), an outdoor commercial patio is permitted with no separation distance to a residential zone, but is limited to a maximum size of 10 square metres and must be located within the front and/or corner side yard. This zoning recognizes the important role that patios play in a vibrant community while providing street-level animation and social interaction. These zones located in the core of residential neighbourhoods limit the size of patios to 10 square metres to ensure compatibility. With respect to the proposed patio of this report, noting that Wellington Street is a traditional mainstreet, a patio that is limited to 20 square metres and is separated from the residential zone and nearest property by 19.0 metres is not only appropriate, but can be accomplished in a way that fits within its surroundings and can function in a compatible manner.

Right-of-Way Patios

On April 12, 2017 Council approved the new Right-of-Way (ROW) Patios on City highways by-law (2017-92). Several patios throughout the City that are located within the ROW are within 30 metres of a residential zone.

In these instances, as comparison to this proposal, the by-law provides the authority for permits to be issued with certain conditions. Proposed patios are subject to a public notification process, and in instances where no objections are made the permit will be issued in accordance with the by-law. However, where objections occur, a recommendation is made to Transportation Committee, and if the recommendation is for approval, conditions of the permit apply.

Standard conditions in this instance acknowledge that a patio within 30 metres of a residential zone is required to close each night by 11:00 pm, and that no patrons are permitted on the ROW patio after this time. Furthermore, audio speakers on the patio must be turned off by 11:00 pm nightly. These conditions are consistent with the Noise By-law.

Furthermore, noise related complaints by a property owner or tenant of a dwelling from a residential or mixed residential/commercial zone will be reviewed and monitored. If it is deemed necessary, the said patio could require noise attenuation measures to be implemented in respect to the ROW patio.

Lastly, a ROW Patio Summer Permit is valid from April 1 to October 31 of the same year.

In the context of the proposed patio and recommended Zoning By-law amendment, the patio is appropriate for the reasons outlined throughout this report. However, as a matter of fairness in response to concerned residents, and drawing on the consistent practice from ROW patios within 30 metres of a residential zone, the impacts of the temporary use patio can be monitored, and if complaints are warranted to deem that it is necessary to add conditions to permitting the patio (permanent), it can be accomplished through the lifting of holding process which requires a restrictive covenant as outlined in Document 2.

Recommended Zoning Details Rationale

Staff are of the opinion that the previous CofA and OMB decisions are not binding at this time, but despite this, would like to take this opportunity to explain some key site and neighbourhood context changes that have occurred.

The Official Plan recognizes the importance of protecting outdoor amenity areas for residential properties. In 2009, the property immediately abutting the subject site to the south (100 Western at the time) was severed to develop a new infill house in the area that was formerly the rear yard amenity area of the existing home; the location of this amenity area proved extremely relevant in the OMB decision. The referenced infill house (102 Western) was built closer to the subject site, eliminating this amenity area, and the existing house has no upper storey windows facing the subject site, and is separated from the property by a fence, driveway and shed. The immediate site context has changed since this proposed patio was last reviewed and now there are no foreseeable overlook issues of outdoor amenity areas on residential properties.

Furthermore, Wellington Street has continued to mature and evolve into a traditional mainstreet with intensification and a variety of new uses and activity occurring along this corridor. The Official Plan recognizes mainstreets as having some of the most significant opportunities for intensification and development. Since the past CofA applications several properties have redeveloped, including new mid-rise mixed-use buildings in the immediate area. It is anticipated that overtime, as encouraged by the policy, that the mainstreet corridor will continue to evolve with intensification and street-level activity. The proposed patio contributes to the evolution of this mainstreet and associated activity in a way that is mindful and respectful of the abutting residential zone. Staff do not believe that the limited size patio will have negative impacts or cause nuisance, but if such issues do occur, such as legitimate noise complaints, the Noise By-law provides the necessary enforcement and protection.

On site, the proposed patio is separated from the principal building (restaurant) by a ramp and accessible walkway to the parking lot; image shown in Document 3. The recommended zoning acknowledges this area as being exempt from having a structure, screen or wall. However, it should be noted that should a structure on site (such as along the rear of the property) be built to at least two metres, the Zoning By-law would be satisfied, despite this gap. In any event, staff are satisfied that the narrow gap will not have any negative impact. The main patio will remain screened from the residential zone, and when looking at a direct line of site between the residential property to the south and the patio in the location of the gap, the area aligns with a tiny portion of the patio that at its greatest, would be large enough for a table of two patrons.

Comments were submitted with respect to fears of future ownership such that a restaurant could change into bar or nightclub with late night liquor sales. The Traditional Mainstreet zone does not permit a bar or nightclub, so a patio approved on this site can only operate as part of a restaurant or place of assembly. With respect to liquor sales, acquiring a liquor license is subject to a public process, and where licenses are issued they may be subject to conditions.

The proposed patio is located within 19.3 metres of residential zone. However, the recommended zoning suggests 19.0 metres. This was purposely done in an abundance of caution to allow screening to be erected at the rear and partial sides of the patio (as proposed) without causing the referenced 19.3 metres to be reduced by virtue of adding screening.

The details of recommended zoning (Document 2) result in a temporary use patio and a permanent patio subject to a holding symbol. Staff pursued this approach in direct response to resident objections. The intent is to introduce the temporary use patio and permanent patio through two implementing by-laws. Although staff support the patio as proposed, as a matter of good faith it is recommended that a temporary zoning allow the patio until November 1, 2018. Following the temporary period, staff can evaluate any legitimate noise complaints or patio nuisance issues, and build conditions into a restrictive covenant, if necessary, in order to lift the holding symbol. A restrictive covenant could place necessary control on items such as hours of operation, months open, music, lighting, number of seating and details of the screening, for example.

Furthermore, on the matter of noise, it should be noted that as part of the submitted Planning Rationale in support of the rezoning application, Appendix 1 included a noise study completed by State of the Art Acoustik Inc. As part of a submission of comments on the application from nearby residents, a countering noise review completed by

Integral DX Engineering Ltd. was also received. Information from these two documents were duly considered by City staff, however, neither document influenced the recommendation now provided to Committee. It can be noted that the methodologies and assumptions made by both documents are inconsistent with current City policies and guidelines, and as stated above, noise generated by people in such environments are not governed by the City of Ottawa Official Plan Section 4.8.7, by the City of Ottawa Environmental Noise Control Guidelines (Council approved in January 2016), or by the Ministry of Environment and Climate Change document NPC-300. Additionally, noise generated by people are duly and solely regulated by the City of Ottawa Noise By-law (No. 2004-253).

If through the temporary use By-law, the patio was deemed not to be appropriate, the holding symbol would not be lifted or it and the provisions that permit an outdoor commercial patio could be removed through an Omnibus By-law.

Staff, through Councillor Leiper's office, arranged a meeting with the immediate neighbours of the subject site to discuss the ideas around the temporary patio and permanent patio subject to a holding symbol that may be lifted once a restrictive covenant was registered on title. This meeting occurred on May 29, 2017 and was intended to explore reasonable and fair solutions to the concerns raised through the review of this application.

RURAL IMPLICATIONS

There are no rural implications associated with this report.

COMMENTS BY THE WARD COUNCILLOR

Councillor Leiper provided the following comments:

"I am pleased to support this application to re-zone this property to permit an outdoor patio at the Wellington Diner property. My office has received significant feedback on the proposal since it was made public, including from its opponents and from a very large number of supporters. I am comfortable that it will be a positive addition to the Wellington Village community, and ask my colleagues to support it."

LEGAL IMPLICATIONS

Should the recommendations be adopted and the matter appealed to the Ontario Municipal Board, it is anticipated that a two to three-day hearing will result. It is anticipated that the hearing could be conducted within staff resources. Should the

application be refused, reasons must be provided. In the event of an appeal it would be necessary to retain an outside planner and possibly a noise consultant.

As noted in the report, Legal Services is of the opinion that the past applications are not binding in the present case. The prior two applications were applications for a minor variance under the *Planning Act*, section 45, the current application is a for a rezoning pursuant to section 34.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with the recommendations in this report.

FINANCIAL IMPLICATIONS

Potential financial implications are within the above Legal Implications. In the event that an external planner is retained, the expense would be absorbed from within Planning, Infrastructure and Economic Development's operating budget.

ACCESSIBILITY IMPACTS

The proposed patio is accessible with direct, at-grade, access to the public sidewalk, and from the rear parking the area the patio can be accessed via an accessible ramp.

TERM OF COUNCIL PRIORITIES

This project addresses the following Term of Council Priority:

EP2 – Support growth of local economy

APPLICATION PROCESS TIMELINE STATUS

This application was processed by the "On Time Decision Date" established for the processing of Zoning By-law amendment applications.

SUPPORTING DOCUMENTATION

Document 1 Location Map

Document 2 Details of Recommended Zoning

Document 3 Proposed Patio Images and Site

Document 4 Consultation Details

CONCLUSION

The department supports the application and proposed Zoning By-law amendment to establish an outdoor commercial patio. Patios contribute to the vibrancy and vitality of mainstreets, and street-level animation is achieved with the proposed patio situated along the corner frontage of the property with direct access to the sidewalk. The patio takes an underutilized portion of the site and in turn enhances the pedestrian realm and provides adequate screening and separation from the neighbouring residential zone. The amendments represent good planning, and the application sets a good example of how smaller patios can fit within the mainstreet context and respond in a compatible manner to abutting properties.

DISPOSITION

Legislative Services, Office of the City Clerk and Solicitor to notify the owner; applicant; Ottawa Scene Canada Signs, 1565 Chatelain Avenue, Ottawa, ON K1Z 8B5; Krista O'Brien, Tax Billing, Accounting and Policy Unit, Revenue Service, Corporate Services (Mail Code: 26-76) of City Council's decision.

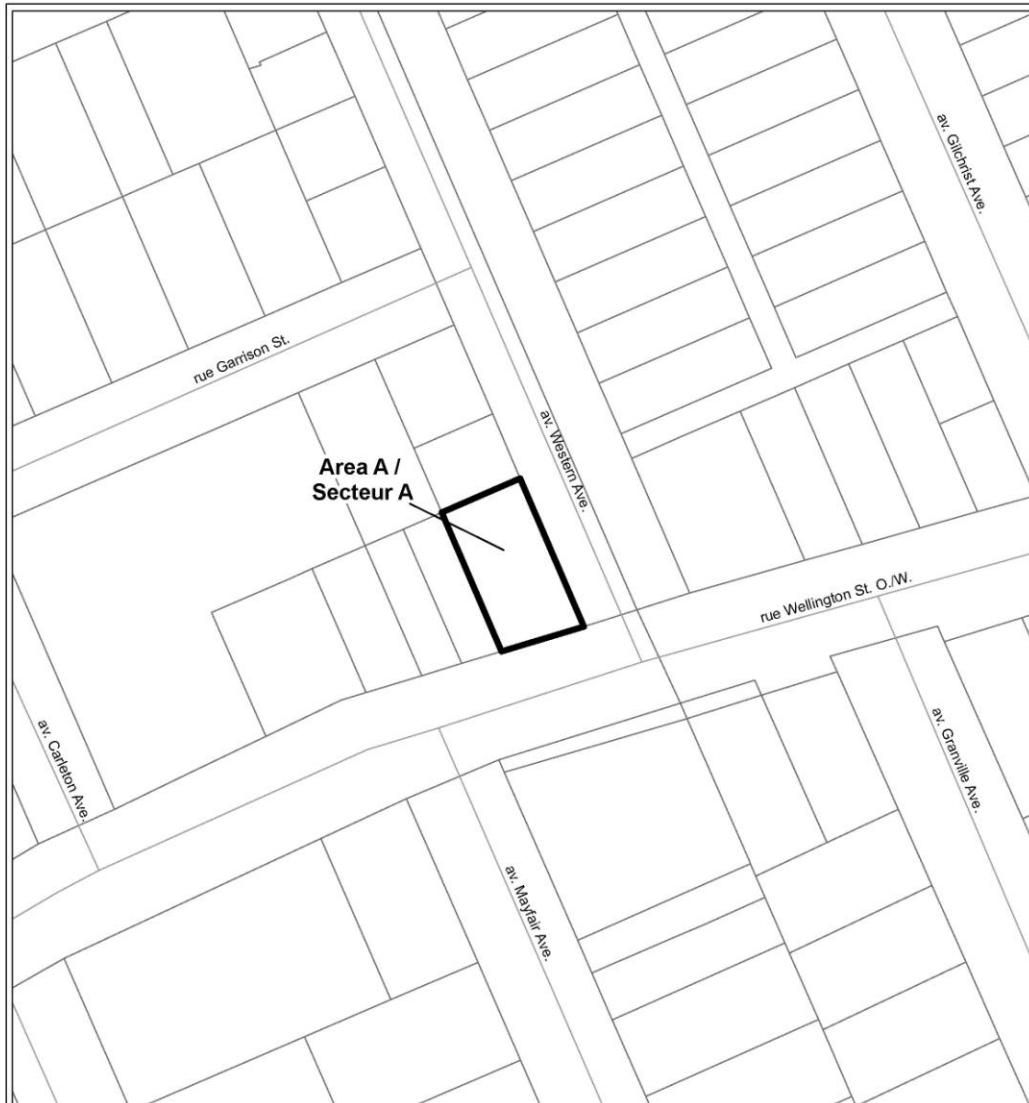
Zoning and Interpretations Unit, Policy Planning Branch, Economic Development and Long Range Planning Services to prepare the implementing by-law and forward to Legal Services.




Legal Services, Office of the City Clerk and Solicitor to forward the implementing by-law to City Council.

Planning Operations Branch, Planning Services to undertake the statutory notification.

Document 1 – Location Map

For an interactive Zoning map of Ottawa visit geoOttawa



		LOCATION MAP / PLAN DE LOCALISATION ZONING KEY PLAN / SCHÉMA DE ZONAGE	
D02-02-17-0021	17-0831-X		1385 rue Wellington Street
I:\CO\2017\Zoning\Wellington_1385			
©Parcel data is owned by Teranet Enterprises Inc. and its suppliers All rights reserved. May not be produced without permission THIS IS NOT A PLAN OF SURVEY		Area A to be rezoned from TM11 to TM11[xxxx]-h Le zonage du secteur A sera modifié de TM11 à TM11[xxxx]-h	
©Les données de parcelles appartient à Teranet Enterprises Inc. et à ses fournisseurs. Tous droits réservés. Ne peut être reproduit sans autorisation. CECI N'EST PAS UN PLAN D'ARPENTAGE		Entire map area is affected by the Mature Neighbourhoods Overlay (section 139) / Tout le secteur de la carte est touché par la Zone sous-jacente de quartiers établis (article 139)	
REVISION / RÉVISION - 2017 / 05 / 17			

Document 2 – Details of Recommended Zoning

The proposed change to the City of Ottawa Zoning By-law 2008-250 for 1385 Wellington Street West is as follows:

1. Rezone the lands as described in Document 1.
2. Amend Section 239, Urban Exceptions, by adding a new exception [xxxx] with provisions similar in effect to the following;
 - a. In Column II, add the text, “TM11[xxxx]-h”;
 - b. In Column III, add the text, “an outdoor commercial patio is not permitted until the holding symbol is removed”
 - c. In Column V, add the following provisions:
 - i. Despite clause 85(3)(a) an outdoor commercial patio is permitted where is it located a minimum of 19.0 metres from a lot in a residential zone and is screened and physically separated from that same lot by a structure, screen or wall that is two metres or more in height so as to mitigate both light and noise from the outdoor commercial patio.
 - ii. Despite the previous bullet, a structure, screen or wall is not required at any location where there is a walkway or accessible ramp providing access to the principal use.
 - iii. The maximum size for an outdoor commercial patio is 20 square metres.
 - iv. The holding symbol may not be lifted until the following is satisfied:
 1. The property owner enters into a restrictive covenant, registered on title, to address any potential issues, if necessary, such as hours of operation, music, lighting, number of seats and details of the patio structure, screening or wall. Such details shall be to the satisfaction of the Director, Planning Services, Planning, Infrastructure and Economic Development.
 - d. A temporary outdoor commercial patio is permitted from the date of the passing of this by-law to November 1, 2018 and is not subject to the holding symbol.

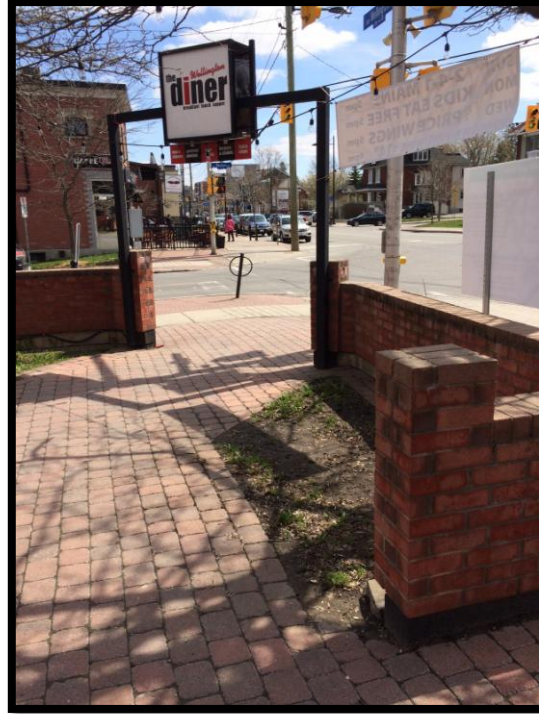
Document 3 – Proposed Patio Images and Site

Site Context – 1385 Wellington

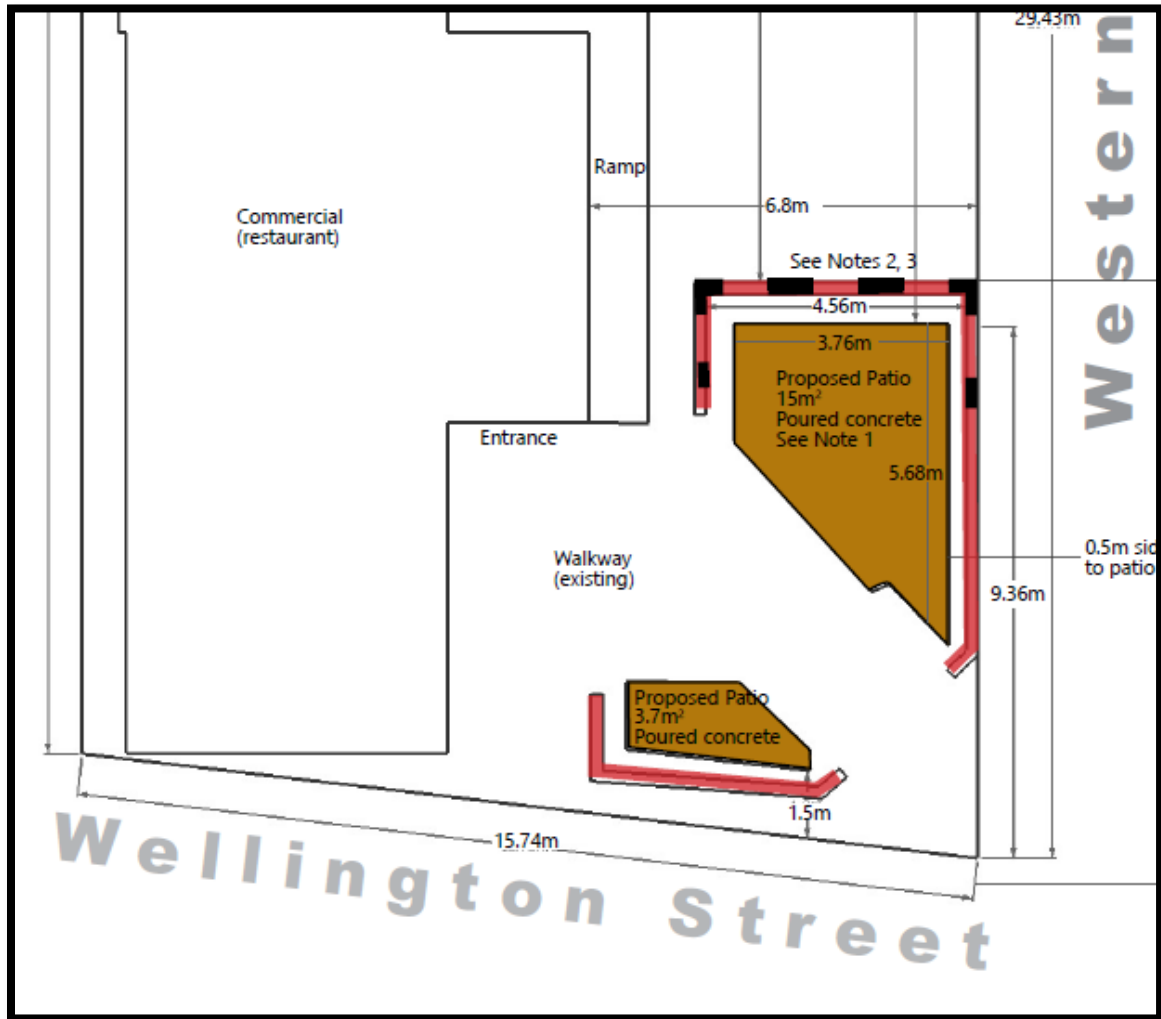


1. Existing Restaurant (The Wellington Diner)
2. Proposed Patio Location
3. Rear Parking Area

Site Details







Note: Minimum height 2.0m screen/structure/wall proposed along rear of patio and portions of the side.

Document 4 – Consultation Details

Notification and Consultation Process

Notification and public consultation was undertaken in accordance with the Public Notification and Public Consultation Policy approved by City Council for Zoning By-law amendments.

Councillor Leiper and the applicant organized a public open house, which was held on May 2, 2017. Approximately 30 individuals attended the meeting. The applicant's consultant presented an overview of the proposal while opening the floor to questions and answers throughout. Staff attended the meeting and responded to questions concerning the application, process and next steps.

Approximately 125 comments were submitted concerning the proposal. The majority of the comments expressed support for the proposed patio, and some simply asked to be kept informed. Approximately 20 submissions were opposed.

The following summarizes, in no particular order, a list of the items raised in association with opposed and supportive comments:

Opposed

Vast majority of the comments submitted expressing concern or objection were from nearby residents in the immediate area. The following is a summary of issues expressed:

Noise

- Noise from the Diner is already excessive without a patio.
- A 20+ person patio will cause negative noise impacts on residential properties.
- "Restaurant Noise" has been studied in various articles and is a widespread problem with people constantly talking over one another.
- What would prevent the hours of operation from changing in the future, or a different business using the patio?
- Residents could not enjoy their properties, such as sitting on front porches, with the additional noise from a patio.
- Serving alcohol into the night will result in animated patrons increasing noise.

- The patio would be additional noise to the noise currently coming from the restaurant such as external fans, and numerous delivery trucks to name a few.
- Many residents spend time in their front yard/porches, and it would be a social cost to have noise impacts.

Response:

The concern of people noise is addressed in the staff report noting that people are exempt from the Noise Control Guidelines, and with the required screening the mitigation deals with the perception of noise. The small size of the patio is not anticipated to cause any adverse effects associated with noise. A bar and nightclub are not permitted uses in the traditional mainstreet zone. In the event of change of ownership or use, the patio can only continue to operate in association with a restaurant or place of assembly. The serving of alcohol requires a liquor licence for the patio, which is subject to a separate and independent public process. Furthermore, the Noise By-law adequately deals with matters of noise.

Additionally, at the time of writing this report, staff are aware of six noise complaints registered against 1385 Wellington, with the first being on April 28, 2017 (during the application review period). Of the six complaints, five were specific to delivery trucks making deliveries before 7:00am. The other complaint had to do with pressure washing machinery being used after 11:00pm. It should be noted that these issues can be easily corrected, and are completely independent of noise concerns related to the patrons in the restaurant and the potential operation of an outdoor patio.

Past applications and refusals

- It is unfair to go through this process again given past refusals. It is a financial burden placed on residents affected most by this proposal. Quote from the OMB decision: "It would also not be fair to the objecting neighbours to place them in a situation in which they have to keep appearing before approval authorities to present their case against the use."
- New applications for a change should be accepted by the city ONLY if there has been a material change which would significantly mitigate the impacts.
- There has been no material change in circumstance or geography to mitigate concerns and impacts expressed through previous applications. The only change is a new home that was built closer to the restaurant.

Response:

The owner/applicant has the right to submit an application under the authority of the *Planning Act*. While past decisions, including that of the OMB, have referenced it being unfair to continue objections before authorities, it is important to note that the site and neighbourhood context has changed. The department supports the proposal as outlined in the report and is of the opinion that the recommended two by-law approach for a temporary and permanent patio represents a fair and reasonable approach, and can help with the successful integration of the proposed within the community.

Respect Zoning By-law

- Many existing restaurants have patios along Wellington that are by-law compliant.
- Additional sources of vibrancy are not needed at the expense of immediate neighbours.
- Patio would negatively impact property values.
- Western Avenue is zoned residential.
- If approved, what is the next application expands the patio further into the parking area towards the residential zone?

Response:

The intent of the Zoning By-law and appropriateness of the proposed patio is explained in the report. The portion of Western Avenue abutting 1385 Wellington Avenue is zoned Traditional Mainstreet, Subzone 11 (TM11). The residential zone begins along the property lines dividing the commercial properties fronting Wellington and residential properties along Western. Should an application be submitted in the future to expand the patio further it will be reviewed at that time; staff are not aware of any such proposal.

Future Use and Precedent

- What happens if approved, and new business have later hours, more liquor sales
- Not supportive – it will set a precedent, and more and more businesses will want a patio. What is the next one is a bar?
- No weight should be given to the fact that the current restaurant is a family diner. Future uses could result in much louder and later hour operation.

- The original Site Plan approved the space (proposed patio area) as landscaping/greenspace and yet it was built to prepare for a patio.

Response:

Each application, including proposals for a patio, is reviewed on its own merit, and even though this proposal is deemed appropriate it does not automatically imply that a similar request for patio less than 30m from residential zone would be approved. A number of factors could contribute to the review such as the size of the patio, site context, and applicable policy, to name a few. The patio was evaluated on the merit of having a patio on site in the proposed location and size. The existing business, other than the fact that it is a restaurant, holds no weight. The original site plan did not acknowledge the area as a patio because it did not comply with zoning.

Parking

- Patio will increase parking challenges on nearby side streets, including lack of availability and vehicles blocking private driveways.

Response:

The proposed patio does not require any parking.

Planning Rationale and Noise Review

- A resident provided comments that were submitted with supporting documentation from a Registered Professional Planner and Licensed Professional Engineer.
- Staff were advised the said submission will also be submitted to Planning Committee for consideration during the review of this item.
- The submitted planning rationale suggests that the proposed patio does not represent good planning and is not consistent with the Provincial Policy Statement, Official Plan, Wellington West Street Secondary Plan, and intent of the Zoning By-law. The reasons generally note that location of and form of the patio is not good planning, the proposal is not significantly different from past applications (CofA, OMB), the patio is not needed to have Wellington continue as a vibrant mainstreet at the cost of adverse impacts on abutting residential properties, and that application submission does not provide an adequate rationale to warrant approval.

- The submitted noise perspective suggests that the site circumstances will affectively make it impossible to screen the patio from the residential zone and as such the patio would be required to be at least 75 metres away in accordance with the Zoning By-law. It also suggests that due to existing noise sources in the area, patrons of the patio will be forced to speak above the volumes and thus adding, negatively, to the noise impacts on surrounding residential properties.

Response:

Staff met with the authors of these submissions and upon consideration of the evidence put forward, staff maintain their position and do not believe that there would be a significant negative impact resulting from this patio. The primary reasons are outlined in the staff report.

Support

Comments submitted in support of the application varied considerably, but generally captured the following themes;

- Traditional Mainstreets should be places to gather with strong urban public realms.
- Any noise concerns are directly addressed by the Noise By-law and screening between properties.
- The City now promotes sidewalk and Right-of-Way patios, and this patio should be supported.
- Very supportive of the Wellington Diner as a family restaurant with good values, compatible business hours, and a patio would be a great addition.
- This is not a bar/nightclub, and the business closes by 9:00pm.
- Patio noise won't exceed noise that already exists on busy commercial street.
- Patio would be a positive addition to the neighbourhood, and would help enliven and contribute to West Wellington. City needs progressive change to be truly livable.
- Neighbourhood is in short supply of patios.
- Support local businesses that add vibrancy to the neighbourhood.

Response:

For the reasons outlined in the staff report the department supports the proposal.

Community Organization Comments and Responses

Wellington Village Community Association

THE WVCA BOARD HAS DETERMINED THAT IT WILL NOT TAKE A POSITION ON THIS APPLICATION

In having reviewed the application for the Patio, we noted on page 21 that the applicant said that both the BIA and WVCA were supportive of the application. I can certainly say that after hours of discussion and consultation, the WVCA did not support the application after our March meeting. This is not to say that we are against the application, but it is incorrect for the application to say that we have fully supported the applicant at this point.

OMB REVISITING AND DIFFERENCES

The WVCA is primarily concerned about ensuring that the proper process and governance is followed. The WVCA sees this issue as a re-application for a Restaurant Patio after an OMB ruling. On this point, in your March 27 email to WVCA Board member Dave Allston, you explained that "A Zoning By-law amendment is a different application than a minor variance (CofA). Although a very similar request is being made with respect to the patio, it is an entirely different application under the Planning Act. In essence, there is no OMB ruling on this request." While this explains why the application is allowed, legally, to go forward, the practical result, if it receives approval, will be a patio in the exact location where an application for a patio has already been denied twice, including once by the OMB.

WVCA Submission

The Wellington Village Community Association (WVCA) has discussed and extensively debated the merits of the recent application to include an outdoor patio at The Wellington Diner. We have reviewed the history, including the previous OMB decision, and I wanted to send you this letter on behalf of the Board.

We recognize that this is a contentious issue for the community. There appears to be wide community support for a patio, yet we also see the non-trivial changes necessary to allow such a patio to exist (addressing the by-law stipulated distance from a residential house, for example). We see the community benefit (and are

generally in favour of patios along Wellington Street, the Wellington Village “main street” as identified in our CDP) but also are aware that the current owner purchased with knowledge that the previous OMB and Committee of Adjustment decisions made clear a patio could not be built. Moreover, the report from the residents of 102 Western Avenue is compelling, and clearly and factually explains the sound issues deriving from a patio.

Fundamentally, however, the WVCA has trouble understanding how a compromise between both parties is not achievable. Mr. Frost has been clear in his (paraphrased) offer to “make right however possible” with the immediate neighbours. In our opinion, said neighbours have legitimate and sincere concerns about a patio near their house, but we believe that an accommodation is possible. That solution may need to involve walls / barriers to mitigate noise; something specifically out of scope in this application. It may involve the City's new “pop-up” parks/patios concept that we see in other establishments in the area (the Ministry of Coffee and The Works, for example). We encourage the implementation of a compromise solution that hasn't yet been considered.

We recognize that, fundamentally, this application has devolved into a dispute between two landowners, yet there is an overall Community impact that necessitates discussion and careful consideration. The WVCA looks forward to helping in whatever way possible, and we remain committed to the idea that a compromise solution between both of these parties is achievable.

Response:

The applicant acknowledged the error in stating that the WVCA was supportive of the application, and for the record, it is confirmed that the position of the WVCA is as stated above. On the matter of past CofA and OMB decisions, Legal Services is of the opinion that those rulings are not binding upon this application. The application for a Zoning By-law Amendment was processed in accordance with Council approved procedures. The proper process and review of this application was carried out.

The department appreciates the WVCA's comments and offer to work on solutions that represent compromise. The department is of the opinion the recommended rezoning resulting in a temporary patio and permanent patio subject to a holding symbol is consistent with this notion of compromise. Should additional considerations arise during the lifting of holding process they will be reviewed at that time.