

Report to Planning and Environment Committee

To: Chair and Members
Planning and Environment Committee
From: Cathy Saunders, City Clerk
Subject: Request for Council Resolution, under section 45(1.4) of the
Planning Act, 1990,
1331 Hyde Park Road
Meeting on: February 18, 2020

Recommendation

That, on the recommendation of the City Clerk, the report dated February 18, 2020 and entitled "Request for Council Resolution, under section 45(1.4) of the *Planning Act, 1990* – 1331 Hyde Park Road" **BE RECEIVED** for information.

Background

This report is submitted in response to a request from Laverne Kirkness on behalf of David Lamers of the Taverna Restaurant to obtain approval from the Municipal Council to submit a Minor Variance application with respect to the property known as 1331 Hyde Park Road, in the City of London.

Section 45(1.3) of the *Planning Act, 1990* states:

"Subject to subsection (1.4), no person shall apply for a minor variance from the provisions of the by-law in respect to the land, building or structure before the second anniversary of the day on which the by-law was amended."

Section 45(1.4) of the *Planning Act, 1990* states:

"Subsection (1.3) does not apply in respect of an application if the council has declared by resolution that such an application is permitted, which resolution may be made with respect of a specific application, a class of application or in respect of such applications generally."

The Municipal Council at its meeting held on November 6, 2018, enacted By-Law Z.-1-182702 to amend Schedule "A" to By-law No. Z.-1 to change the zoning applicable to lands located at 1331 Hyde Park Road, from a Business District Commercial Special Provision (BDC2 (4)) Zone, to a Business District Commercial Special Provision (BDC2 (12)) Zone.

In accordance with the above-noted sections of the *Planning Act, 1990*, Laverne Kirkness on behalf of David Lamers of the Taverna Restaurant is requesting authorization from Municipal Council to submit a Minor Variance application with respect to the property known as 1331 Hyde Park Road, in the City of London to permit the erection of an outdoor patio in association with a restaurant use with a deficiency in parking (89 spaces whereas 99 are required) and on a property that abuts a Residential Zone.

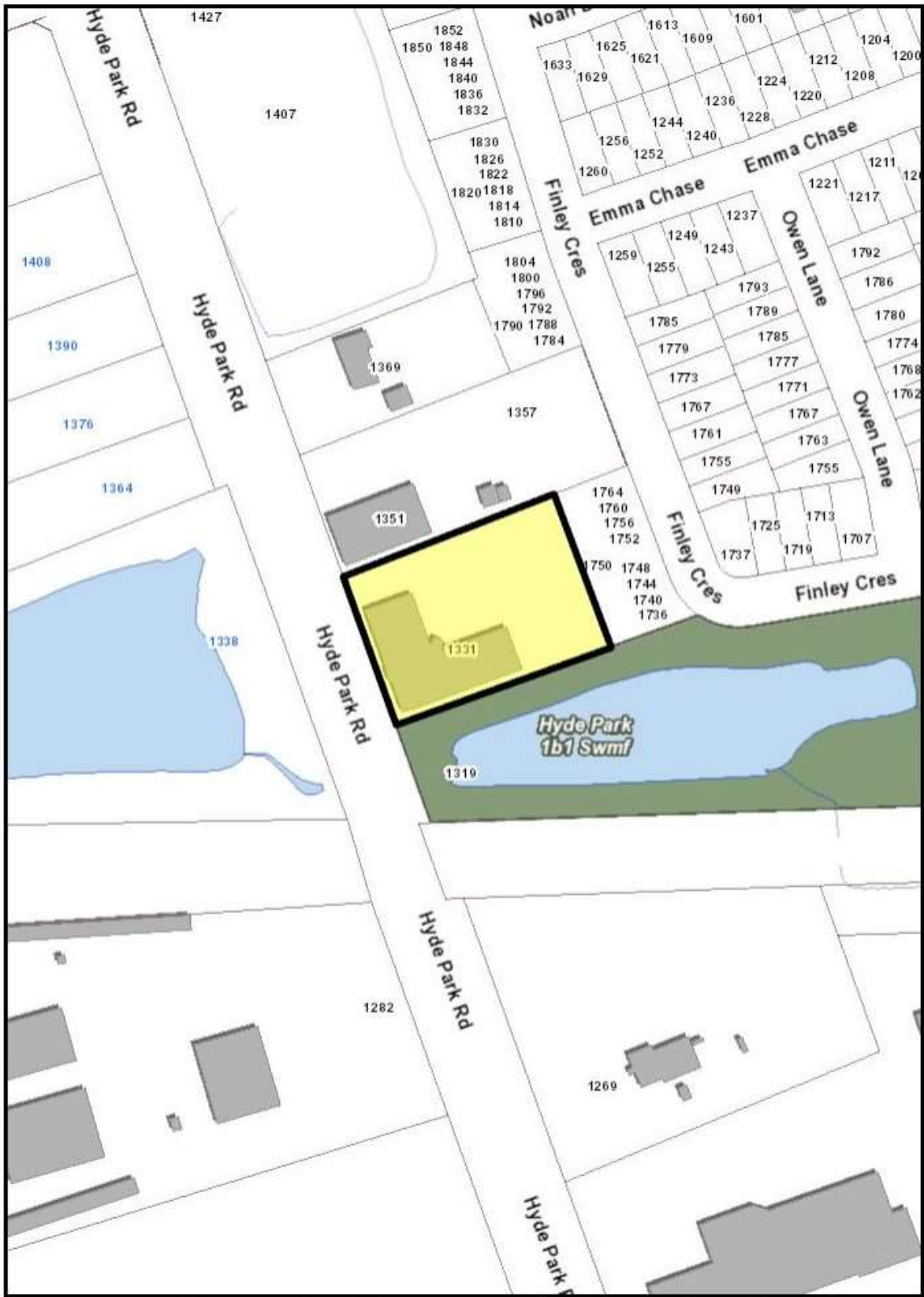
To assist Municipal Council in consideration of the request, the balance of this report provides background information with respect to the previous *Planning Act* applications and zoning by-law information pertaining to the subject property.

Property History

The request is to seek a resolution from Municipal Council to permit the erection of an outdoor patio in association with a restaurant use with a deficiency in parking (89 spaces whereas 99 are required) and on a property that abuts a Residential Zone.

If Municipal Council resolves that the Applicant is permitted to submit an application to the Committee of Adjustment for a Minor Variance, the merits of the proposed application would be evaluated by the Committee of Adjustment. Development Services staff will submit a Planning Report providing planning analysis of the request for the Committee of Adjustment's consideration.


Location Map



Location Map

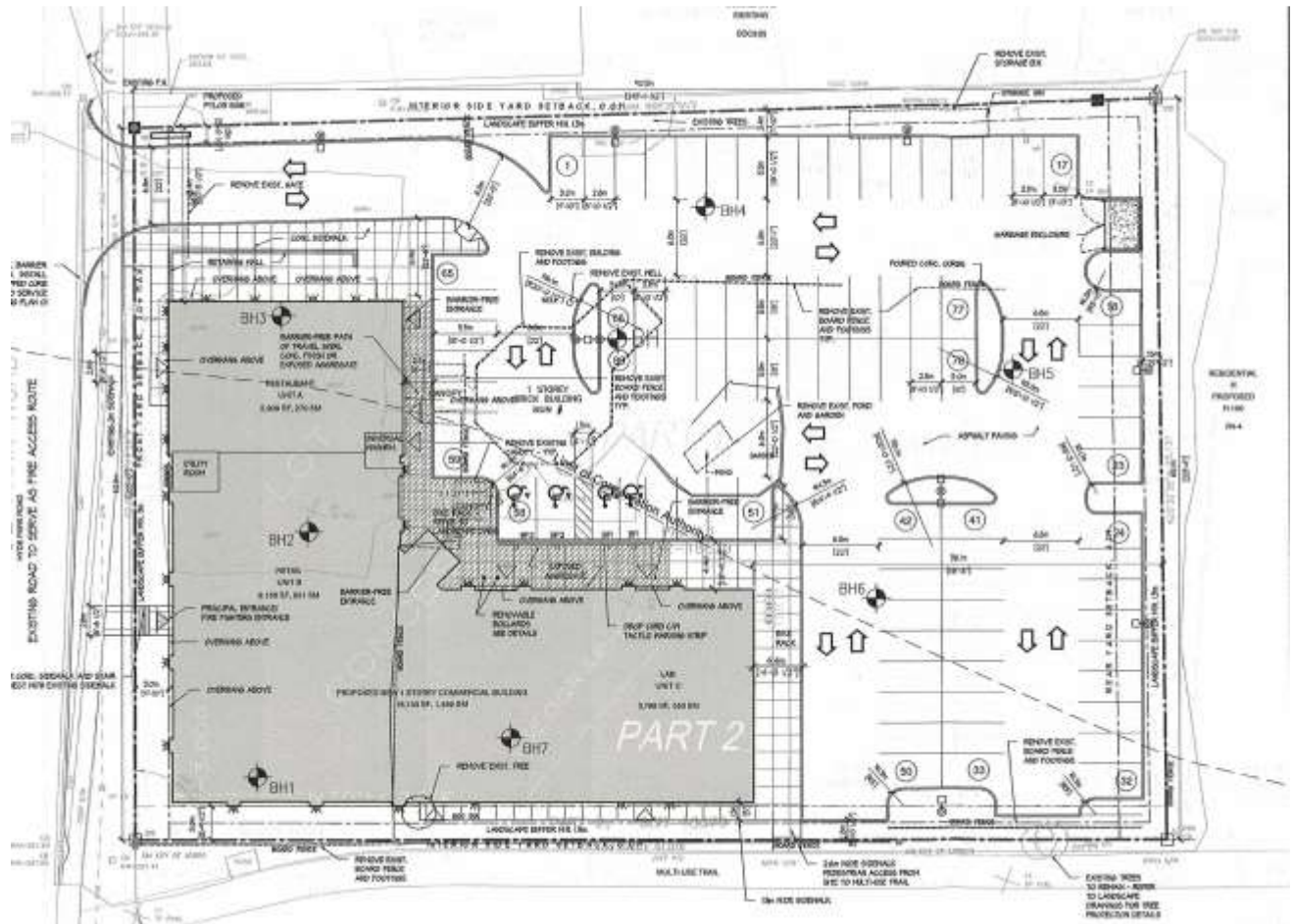
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 Created By: Rob Carnegie
 Date: 2/6/2020
 Scale: 1:2000

Legend

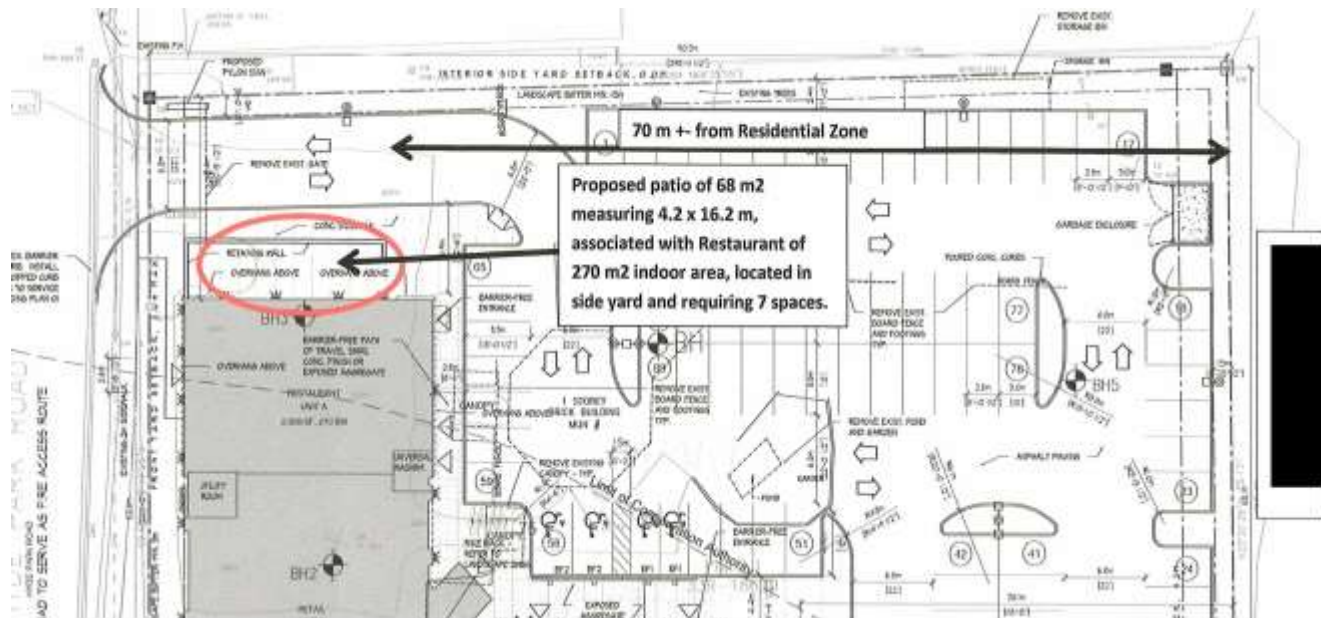
-  Subject Site
-  Parks
-  Assessment Parcels
-  Buildings
-  Address Numbers



Subject Site



Proposed Patio Location:



Previous Reports Pertinent To This Matter

Z-8928 – The Application submitted by 1331 Hyde Park Holdings Inc. relates to the property located at 1331 Hyde Park Road. A staff Report was submitted to the Planning and Environment Committee on October 29, 2018 relating to the requested approval of an Official Plan and Zoning By-law amendment. The requested Official Plan Amendment was intended to bring the policies of the (1989) Official Plan in-line with The London Plan for the subject site, allowing for an expanded range of permitted uses. This amendment was intended to contribute to the further development of Hyde Park Road as a main street.

The requested Zoning By-law Amendment was also expected to contribute to the development of Hyde Park Road as a main street, allowing for a new retail use to occupy a vacant site. An Automobile Sales Boutique was the only new use being introduced through this amendment. This new use represented a unique form of retail, similar to a standard storefront, which would be fully enclosed. A small area for the service and repair of vehicles to support this use, and place limit to ensure that the service and repair is restricted to motorcycles within a fully enclosed structure was also included to allow flexibility for the needs of the user while not detracting from the vibrancy of the main street or creating negative impacts on adjacent residential uses. Restaurant uses were recognized in the existing Zone and were maintained as a permitted use in the recommended Zone.

Planning History

April, 2000 — Municipal Council adopted the Hyde Park Community Plan and Urban Design Guidelines pursuant to Section 19.2.1 of the Official Plan as a guideline document for the review of Official Plan amendments, Zoning By-law amendments, plans of subdivision and other *Planning Act* development applications within the Hyde Park Community. Associated amendments to the Official Plan to apply appropriate land use designations consistent with the Community Plan were also approved at that time. An updated Hyde Park Community Plan was adopted by City Council in 2002.

March, 2012 — A Report was submitted to Planning and Environment Committee recommending approval of a red-lined draft plan of subdivision for 225 South Carriage Road and 1331 Hyde Park Road. This Report also recommended refusal of a requested Official Plan Amendment for the property at 1331 Hyde Park Road to change the designation of the property from Multi-Family Medium Density Residential to Main Street Commercial Corridor. It also recommended refusal of a Zoning By-law Amendment application to rezone 1331 Hyde Park Road from a Urban Reserve (UR3) Zone to a Holding Business District Commercial Special Provision (h.BDC2 (4)) Zone. (File: 39T-08502/Z-7489/OZ-7510).

Another Report to the Planning and Environment Committee on the Hyde Park Commercial Official Plan and Zoning Review for 1331-1369 and 1364-1420 Hyde Park Road was also considered at the same Municipal Council meeting. That Report recommended that no action be taken to amend the Official Plan land use designation and Zoning By-law to expand permissions for commercial land uses to the sites.

At its meeting of April 10, 2012, Municipal Council referred back both Report so that the Civic Administration could further consult with the Applicant and the neighbourhood.

June, 2012— following the referral back to the Civic Administration to further consult with the Applicant and the neighbourhood, information reports on both the Draft Plan of Subdivision, Official Plan Amendment, and Zoning By-law Amendment for 225 South Carriage Road and 1331 Hyde Park Road and on the Hyde Park Commercial Official Plan and Zoning Review for 1331-1369 and 1364-1420 Hyde Park Road were provided to the Planning and Environment Committee in June, 2012 detailing this further consultation.

Municipal Council subsequently resolved that notwithstanding the recommendation of the Managing Director, Land Use Planning and City Planner, the Civic Administration be directed to initiate an Official Plan Amendment to change the designation of 1331 Hyde Park Road from Multi-Family, Medium Density Residential to Main Street Commercial Corridor. Council also directed that the site be rezoned to a Holding Business District Commercial Special Provision (h.BDC2 (4)) Zone.

April, 2013 – A Consent Application approved to sever the front 0.5 hectares from the balance of the subdivision lands for a Food and Artisan Market (File: B.05/1 3). This severed portion of land is the subject site.

October and November, 2013 — Reports were submitted to the Planning and Environment Committee recommending the removal of the Holding Provision from 1331 Hyde Park Road to permit the development of a Food and Artisan Market. The Holding Provision was removed.

Pertinent Matters from the Municipal Council Direction granting Approval

The subject site is known municipally as 1331 Hyde Park Road and is currently zoned Business District Commercial Special Provision (BDC2(14)). The Zoning approved by Municipal Council includes some of the following lot regulation listed below:

BDC2(14) 1331 Hyde Park Road

- a) Additional Permitted Use:
 - i) Automobile Sales Boutique

- b) Regulations
 - i) The repair and service of vehicles may be permitted as an accessory use to an Automobile Sales Boutique provided it is limited in size to a maximum area of 50 square metres, is fully enclosed, and is used exclusively for the service of motorcycles.

Other Pertinent Regulations of the BDC Zone:

- Permitted Uses Restaurants listed among Section 25.2 Uses
- Lot Area (Minimum) N/A - existing
- Lot Frontage (Minimum) 20 m
- Yard Setbacks:
 - Front Yard N/A - existing
 - Interior Yard N/A - existing
 - Rear Yard N/A - existing
- Off-Street Parking 99 required (incl. Patio) 89 provided

Regulations related to Outdoor Patio Associated with a Restaurant Use (4.18)

- Capacity
 - No outdoor patio shall accommodate more than 50 percent (50%) of the licenced capacity of the restaurant with which the patio is associated, or 50 persons, whichever is the greater.
- Location
 - (a) No outdoor patio shall be permitted where any lot line adjoins lands which are in a residential zone class which is not in combination with another zone, or is separate therefrom by a lane.
 - (b) Notwithstanding the provisions of Paragraph (a), where only the rear lot line adjoins a residential zone class which is not in combination with another zone, or is separated therefrom by a lane, an outdoor patio shall be permitted in the front yard.

3.0 Policy Context

3.1 Planning Act

The *Planning Act* provides the basis for the establishment of a Committee Adjustment to evaluate requests for relief from regulations of a Zoning By-law.

Powers of Committee

45 (1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained. R.S.O. 1990, c. P.13, s. 45 (1); 2006, c. 23, s. 18 (1); 2009, c. 33, Schedule 21, s. 10 (11).

On July 1, 2016, Bill 73 came into effect and implemented a number of legislative changes to the *Planning Act*. As part of Bill 73, Section 45 of the *Planning Act* was amended (45 (1.3)) by putting in place a two-year moratorium for minor variance applications within two years of the date of passing of a zoning by-law amendment. The intent of the changes to the *Planning Act* were to give greater control to municipalities to prevent the reversal of zoning provisions that council determined to be important through the by-law amendment processes. It was also recognized that there may be instances where material changes to development proposals are necessary and that minor relief from regulations are required to permit the development. To address this, provisions were further included in the *Planning Act* (45 (1.4)) to allow, by council resolution, the opportunity to submit an application for a Minor Variance.

Two-year period, no application for minor variance

45 (1.3) Subject to subsection (1.4), no person shall apply for a minor variance from the provisions of the by-law in respect of the land, building or structure before the second anniversary of the day on which the by-law was amended. 2015, c. 26, s. 29 (2).

Exception

45 (1.4) Subsection (1.3) does not apply in respect of an application if the council has declared by resolution that such an application is permitted, which resolution may be made in respect of a specific application, a class of applications or in respect of such applications generally. 2015, c. 26, s. 29 (2).

The Applicant has made a request of Municipal Council by way of the Planning and Environment Committee in accordance with Section 45 (1.4), to permit such a resolution to be passed.

It should be noted that minor variances are deliberated by the Committee of Adjustment and that public notice to neighbouring properties would be provided should the application be permitted to be made.

4.0 Conclusion

Should the Municipal Council resolve to allow the Applicant to submit a Minor Variance application to provide relief from the parking regulation and locational criteria related to outdoor patio's associated with a restaurant use the Civic Administration will present recommendations to the Committee of Adjustment with regard to the planning merits of the application.

SUBMITTED BY:

**CATHY SAUNDERS
CITY CLERK**

Appendix A



**Kirkness
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Urban and
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February 1, 2020

Lou Pompilli - Manager
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**Subject: REQUEST to APPEAR before the PEC to request permission - Minor Variance
APPLICATION SUBMISSION for David Lamers of the Taverna Restaurant at 1331 Hyde Park
Road , east side north of the CPR bridge, London, On.**

Lou:

Could we try to get this matter placed on the February 18th PEC agenda? Your Aisling Lavery advises by email the following:

Hi Laverne, There was a by-law amendment on this property that was passed November 6, 2018. I can't accept this application for Minor Variance until the 2 year anniversary of this by-law amendment or until you get a resolution from Council. Apologies for missing that the first time around. Please come in and collect the application and cheque.
Thanks, Aisling

The about-to-open Taverna Restaurant would like to have a patio and is short 7 spaces of parking for it, in a built parking lot that has a capacity of 89 spaces.

Please find enclosed the Application for a Minor Variance, seeking two MVs.

The signed Zoning Referral Form is attached.

Dave Lamers is one of two partners heading up the new Taverna Restaurant and proposes to open an outdoor patio of 68 m², measuring 4.2 m x 16.2 m – see attached plan. Figure 1 – See Location and siting aerial plan.



Figure 1 showing location of Taverna Restaurant in red circle.

The site is zoned Business District Commercial BDC2(4). The parking requirement is 1 space per 10 m² and therefore 7 spaces would be required. The Site Plan attached shows the Parking required without the Patio which is 92 spaces and 89 are provided with 20 bicycle spaces which meets the provisions of the Zoning Bylaw.

Also section 4.18 of the ZB sets out regulations for Outdoor Patios.

- CAPACITY – is met as the 68 m² patio represents 20% of the total restaurant which is 270 m² indoor
- LOCATION – the ground floor patio meets all location regulations except for it is required to be in the FRONT YARD because it is adjacent to a RESIDENTIAL zone to the east. The City urban design standards and specific zoning require the main building to be at the very front of the site resulting in no front yard to use for a patio. However, the patio is very close to the FRONT YARD and far away from the RESIDENTIAL ZONED lands to the east – about 70 m separation from patio to rear lot line. SEE ATTACHED PATIO PLAN. A minor variance is being sought for this.
- LIGHTING—managed at the SPA stage.
- LOADING- no loading space is being proposed.
- PARKING – as stated above the parking requirement is 1 space per 10 m² gfa which results in a shortage of 7 spaces in the overall site plan which accommodates 89 spaces. A minor variance is being sought for this.

The Four tests of evaluating the MVs.

1. Official Plan conformity – the Minor Variances are in accord and conforms to the 1989 Official Plan which designates the lands as Mainstreet. Permitted Uses include restaurants. The site design has been evaluated against the City's urban design

Standards and was put before the Urban design review Panel. All recommendations were implemented.

2. The Minor Variances meet the general intent of the BUSINESS DISTRICT COMMERCIAL – BDC2 zone which permits restaurants.
3. The Minor Variances are “Minor” in that:
 - a. Numerically, the 7 spaces represent about 7% of the total required parking of 99 spaces.
 - b. The site is served by London Transit with the Hyde Park route.
4. The Minor Variances are appropriate for the desirable use of the lands because:
 - a. It fronts onto a busy arterial road
 - b. Site Plan approval was done so in the face of meeting the City’s Urban design standards.
 - c. Patios are a normal part of indoor seated restaurants and some would argue that patrons are sitting outside instead of inside and therefore no additional parking should be required.

In conclusion, it is the writer’s opinion that the two MVs requested represent sound land use planning.

We look forward to working with the City to gain expeditious approval on this application.

Sincerely,

Kirkness Consulting Inc., Urban and Rural Planning

A handwritten signature in cursive script that reads "Laverne Kirkness".

Per: Laverne Kirkness BES.RPP.MCIP

Encl.

cc. Dave Lamers