

Boulevard Cafe - 1540 Dupont Street Perth Avenue Flank (Davenport)

(City Council on December 14, 15 and 16, 1999, adopted this Clause, without amendment.)

The Toronto Community Council recommends that:

- (1) the application for a boulevard cafe on the Perth Avenue flank of 1540 Dupont Street be denied; and**
- (2) City Council's decision respecting this matter be forwarded to the Alcohol and Gaming Commission of Ontario.**

The above recommendations were carried unanimously as follows:

Yeas: Councillors McConnell, Bossons, Bussin, Chow, Disero, Fotinos, Jakobek, Pantalone and Walker - 9

The Toronto Community Council submits the following report (November 18, 1999) from the Right of Way Management, Transportation Services, District 1:

Purpose:

To report on the business owner's appeal of staff's refusal of an application for a boulevard cafe on the Perth Avenue flank of 1540 Dupont Street, because of a negative poll. As this matter is of public interest, it is scheduled as a deputation item.

Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendation:

It is recommended that:

- (1) City Council deny the application for a boulevard cafe on the Perth Avenue flank of 1540 Dupont Street;
- OR
- (2) City Council approve the application for a boulevard cafe on the Perth Avenue flank of 1540 Dupont Street, notwithstanding the negative result of the public poll, and that such approval be subject to the applicant complying with the criteria set out in §313-36 of Municipal Code Chapter 313 of the former City of Toronto.

Background:

Mr. Sotirios (Sam) Galanis, in a letter dated July 19, 1999, has requested an appeal of staff's decision to refuse his application for a boulevard cafe on the Perth Avenue flank of 1540 Dupont Street.

Comments:

Mr. Sotirios (Sam) Galanis, Director, 1127489 Ontario Limited, o/a This Month Only Bar 1540, 1540 Dupont Street, Toronto, Ontario M6P 3S4, submitted an application on April 8, 1999 requesting a licence for a boulevard cafe on the Perth Avenue flank of 1540 Dupont Street.

The proposed cafe was divided into 2 separate areas due to the presence of a residential entrance on the side of the building. The 2 areas are approximately 35.9 sq. m (Area 1) and 41.7 sq. m. (Area 2), as shown on the attached sketch (Attachment No. 1) for a total cafe area of 77.6 sq. m. The total cafe can accommodate 17 tables with a potential seating capacity of 68 people.

This application meets the physical criteria for boulevard cafes as set out in § 313-36 of Municipal Code Chapter 313, Streets and Sidewalks, of the former City of Toronto Municipal Code.

As the proposed cafe flanks a residential street, the Municipal Code requires a public poll of owners and tenants within 120 m from the proposed cafe. If the majority of the cast ballots are in favour of the application, the cafe is approved. If the majority are opposed, the Commissioner must deny the application. If there is a negative response, re-polling for the same purpose may not take place until 2 years have passed from the closing date of the previous poll.

A poll dated May 13, 1999 to June 14, 1999 was conducted on Perth Avenue between 395 to 411 and 404 to 418, including 1540 and 1546 Dupont Street to determine neighbourhood support. The poll was conducted in English and French (i.e., every person polled received the ballot form in 2 languages). The results of the poll were as follows:

Polling Summary

Ballots cast		37
Opposed	37	
in favour	0	
No response		54
Returned by post office		3
Total ballots issued		94

Mr. Galanis was advised in writing on June 28, 1999 that given the negative response, a licence could not be issued. Furthermore, Mr. Galanis was advised that no further application for a boulevard cafe flanking 1540 Dupont Street could be considered for 2 years from the closing date of the public poll which was June 14, 1999.

In Mr. Galanis' letter of July 19, 1999, he argues that the negative results of the public poll do not accurately reflect neighbourhood support for his application and suggests that the petition he

submitted along with his application on April 8, 1999 is a more accurate reflection of positive support for the boulevard cafe.

For your Community Council's information, Mr. Galanis previously submitted an application on August 19, 1996 for a boulevard cafe on the Perth Avenue of 1540 Dupont Street and was not approved because of a negative poll.

The northerly portion of the City boulevard on the Perth Avenue flank of 1540 Dupont Street is currently licensed for 1 residential boulevard parking space. The licensee, Mr. Vito Magistrale, is the building owner and would be required to give up his licence in order to accommodate his tenant's proposed boulevard cafe area.

Mr. Galanis submitted an application for commercial boulevard parking on August 13, 1999 to park a vehicle on the southerly portion of the City boulevard on the Perth Avenue flank of his business. This application is currently 'on hold' at the request of Mr. Galanis, pending the outcome of this appeal. Should Council approve Mr. Galanis' appeal, he will be rescinding his application for boulevard parking privileges.

Conclusions:

Staff cannot issue Mr. Galanis a licence for a boulevard cafe on the Perth Avenue flank of 1540 Dupont Street because the poll result was negative. I am satisfied that the public poll was conducted properly.

Although Mr. Galanis' petition of the neighbourhood may seem to indicate positive support for his proposal, there are no provisions within the Municipal Code of the former City of Toronto to consider petitions when determining neighbourhood support for an application.

As you know, the current public polling process has been developed by the City as the most efficient, accurate and unbiased method of determining neighbourhood support from those property owners and tenants who would be most affected by a licensed use of the public right of way.

On hearing of depositions, the Toronto Community Council must decide whether or not to recommend that City Council grant the appeal for the operation of a boulevard cafe flank 1540 Dupont Street.

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The Toronto Community Council reports, for the information of Council, having also had before it during consideration of the foregoing matter, a communication (December 1, 1999) from Ms. Elizabeth McEvoy, and a copy thereof is on file in the office of the City Clerk.

The following persons appeared before the Toronto Community Council in connection with the foregoing matter:

- Mr. Mark Macdonald, Toronto, Ontario; and
- Mr. Stephen Edell, Barrister, Danziger; Hochman and Stephen Edell .

Insert Map – 1540 Dupont Street

(City Council on December 14, 15 and 16, 1999, had before it, during consideration of the foregoing Clause, a communication (December 3, 1999) from Jamie Crane, in opposition to the application for a Boulevard Café at 1540 Dupont Street, Perth Avenue Flank (Davenport).)