

Clause embodied in Report No. 6 of the Midtown Community Council, as adopted by the Council of the City of Toronto at its meeting held on July 24, 25 and 26, 2001.

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**1678 Avenue Road - The Bistro
Renewal of Patio Licence
(Eglinton-Lawrence - Ward 16)**

(City Council on July 24, 25 and 26, 2001, adopted the following recommendation:

“It is recommended that Council grant a Boulevard Café Licence to the Bistro Café at 1678 Avenue Road, for a period of three (3) years commencing on the date of Council’s approval, to permit the existing structures to remain ‘as is’, that is:

(a) the wooden flooring, lighting and heating, so long as it is attached to the building; and

(b) the existing swing door, the existing plastic screening and the existing canopy;

subject to:

(a) the applicant agreeing to immediately remove what structures exist, in the event the City is required to service the boulevard (road allowance), such removal to be required for as long as such work needs to take place; and

(b) the existing canopy being cantilevered so that no structures are located more than 14 feet from the outer edge of the wall at ground level.”)

The Midtown Community Council submits the following report (June 4, 2001) from the Manager, Municipal Licensing and Standards and Court Services, North District, without recommendation because all motions, failed:

Purpose:

To receive Council's direction on renewal of a boulevard lease for the subject location.

Recommendations:

It is recommended that:

- (1) Council review the attached Boulevard Café Licensing Agreement that staff is prepared to enter into with the applicants;
- (2) grant or refuse a Boulevard Café Licence as prepared by Legal Services for The Bistro on Avenue Road (1678 Avenue Road);

- (3) Council review the position of the applicants with respect to further concessions requested;
- (4) grant or refuse a Boulevard Café Licence as prepared by Legal Services with any amendments that Council considers appropriate;
- (5) Council take into consideration the objection of Rhys Fockler on behalf of his family and property owners on the cul-de-sac;
- (6) direct the applicants to immediately reconfigure the café to meet the requirements of the licence and to pay the appropriate fees;
- (7) if the applicants do not immediately reconfigure and/or pay the requisite fees, direct staff to remove the structure; and
- (8) If Council's decision is to refuse the licence, provide direction to staff to take the necessary steps to immediately remove the structure.

Background:

This property is located at the north-west corner of Avenue Road and Brookdale Avenue in the former City of North York. The lot is zoned C1 permitting a restaurant. Under the Zoning By-law, Clause 22.9.1(7) "no public sidewalk, road allowance or lane shall be used for the purpose of an outdoor café unless pursuant to a subsisting lease or licence issued under the By-laws of the former City of North York."

This matter was before the Transportation Committee in 1987 for similar issues to the problems encountered at this time. The application was not approved in view of the fact that the structure was not an outdoor café as defined in the Zoning By-law and therefore is not a permitted use on a road allowance. One of the current operators of the business is fully aware that an enclosed structure is not permitted as he was involved with the business at the time of the 1987 refusal.

The outdoor café was licensed at a later time as a temporary structure. In November of 1999, it was noted that the structure had been fully enclosed and being used on a permanent basis.

On December 15, 1999, a Notice of Violation was issued. Subsequently, Legal Services and I met with the owners' Solicitor to discuss the City's issues. That discussion was summarized in a letter to Weir & Foulds, Barristers and Solicitors, on May 18, 2000, the owners' Solicitor at that time. Mr. Adam Brown now represents the applicants. The owners/applicants were advised to remove the heating equipment, roof structure, ceiling fans, and any other similar fixtures that are encroaching onto City property. To date, the permanent structure remains unchanged. The City has been in negotiation since that time attempting to resolve the issues and reach an agreement on the lease of City-owned property.

Conditions for Leasing Licences for Boulevard Cafes in former North York:

- ◆ the lessor is to be the occupant of a ground floor premises licensed as a restaurant in which washrooms are located and shall operate the boulevard café in conjunction with the restaurant;
- ◆ the area occupied is to be paved and maintained in a clean and sanitary condition.
- ◆ all items are to be served from the adjacent premises;

- ◆ the City or any public utility is to be able to enter the area for the purpose of installing or maintenance of pipes, cable or other services;
- ◆ an outdoor café use on the City's right of way is restricted to the temporary occupancy of the road allowance during the month of May 1 through November 1. Further that the outdoor café must be open, the appropriate application made and the appropriate fee paid;
- ◆ the applicant would be entitled to construct a railing around such an open patio but is not entitled to fully enclose the patio with a roof and wall like fixtures;
- ◆ the edge of the outdoor patio which runs parallel to the City street must be set back a minimum of 1.5 metres from the inner edge of the curb in order to allow for proper pedestrian travel; and
- ◆ flooring material of any kind is not allowed within the patio space.

Legislation:

- ◆ Zoning By-law No. 7625 defines an "outdoor café" to be – "an outdoor area adjoining a restaurant and consisting of outdoor tables, chairs, plantings and related decorations and fixtures and where meals or refreshments are served to the public for consumption on the premises;
- ◆ private property outdoor cafes are permitted in commercial zones and are subject to a number of particular requirements including a maximum size that does not exceed 50 percent of the patron area of the adjacent restaurant;
- ◆ parking and other zoning regulations are not applicable to "outdoor cafes" on private property or on the road allowance, however, enclosed structures which basically form an extension of the principle building are subject to parking/zoning regulations. The existing building has a floor area of approximately 1185 square feet;
- ◆ if one assumes a "patron area" of 50 percent of the building, 12 parking spaces would be required.

Building Code:

Building is defined by the Building Code Act, S.O. 1992, c.23 as, (a) structure occupying an area greater than ten square meters consisting of a wall, roof and floor or any of them or a structural system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto. The structure erected at this location has made the area into an extension of the indoor restaurant with amenities to provide indoor comfort such as a furnace, lighting and full enclosures, walls, roof and floor. This is not what is considered temporary and fits within the scope of "building" as defined by the Building Code Act.

As such, this structure and the heating installation requires a building permit. A permit will not issue as this structure is on Road Allowance. The Building Division does not issue permits for property where the owner (City) has not authorized construction. An order was issued by the Building Inspector for construction without a permit.

Leasing By-law No. 29607 which requires a leasing licence in order to maintain a boulevard café on City right of way.

By-law No. 21621, as amended to prohibit or regulate the obstructing, encumbering, injury or fouling of highways wherein no person shall operate a boulevard café except under the authority of a lease issued under the By-laws.

Current Status:

The boulevard café exists in its enclosed state extending 19' from the south exterior wall of the premises and extends approximately 39.37 feet in length to the west covering an area of approximately 751 square feet. There is very little passable space beyond the enclosed area. Heating and ceiling fans are provided in the interior. There is an interior wood floor. To the west of the boulevard café, is leased boulevard parking.

I met with Roberto Stopnicki, Director of Transportation Services for District 3, on April 9, 2001, to discuss what concessions could reasonably be made with respect to their requirements. It was agreed that:

- (a) notwithstanding the patio should only extend 10' 6" away from the south exterior wall of the Bistro based on accommodation of a 6" curb with an 18" clearance from the inside curb to the edge of the sidewalk to allow for the parking metres with a further 5' allocated to sidewalk and 18" from the edge of the sidewalk, the City is prepared to allow the patio to extend 14' from the outer edge of the wall until such time as the City intends to construct a sidewalk; and
- (b) the City will enter into a 12-month agreement given the fact that there is no sidewalk on the Bistro's side of the street.

Mr. Stopnicki is not in agreement with the roof as constructed. The roof is to be retractable and of canvas construction and extend only to the 14 feet to allow City forces to enter the area with ease to do work if necessary.

The wooden decking is to be removed and the floor of the outdoor café is to be level with the adjoining sidewalk. Mr. Stopnicki indicated that a paving permit would be made available.

No heating equipment or other fixtures such as ceiling fans are to be maintained over the City's street allowance.

Exterior doors, coverings over windows or openings and wooden wall like fixtures are to be removed.

A Boulevard Café Licensing Agreement was prepared by Legal Services incorporating the requirements and sent for signature to the applicants (copy attached).

The Solicitor for the principles of the Bistro has advised that his clients want further concessions as follows:

- (1) they wish to maintain the roof structure the way it is and cantilever the outside posts to 14 feet;
- (2) they wish to maintain a heating source in the patio attached to the building;
- (3) they would like included where we have indicated no exterior doors, coverings over windows or openings and wooden wall like fixtures “excluding clear plastic weather covering that can be draped between the edge of the awning and the top of the railing”; and
- (4) they would like to maintain the wooden decking in the patio.

Conclusions:

- (1) the additional concessions requested are basically to allow the café to be maintained as currently constructed slightly diminished in size at the floor level and without a door;
- (2) the use of City-owned property is not ‘as a right’. The leasing of City right of way is meant to be of a “temporary” nature and not an extension of interior private restaurant space; and
- (3) the structure requested by the applicants allows them an extension circumventing private property requirements for enclosed spaces.

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The Midtown Community Council also had before it the following communications:

- (i) (June 8, 2001) from Mr. Adam J. Brown, Brown Dryer Karol, requesting that the item be deferred to the July 10, 2001 Midtown Community Council meeting;
- (ii) (June 14, 2001) from Mr. Adam J. Brown, Brown Dryer Karol, requesting that the item be deferred to the September 12, 2001 Midtown Community Council meeting; and
- (iii) (June 20, 2001) from Councillor Anne Johnston, requesting that the item be deferred to the September 12, 2001 Midtown Community Council meeting.

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

- Mr. Rhys Fockler, Toronto;
- Ms. Diane Cartwright, Toronto; and
- Mr. Adam J. Brown, Solicitor for the owner.

The Midtown Community Council reports that the following motions failed:

- A. Moved by Councillor Mihevc: That the matter be deferred to the meeting of the Midtown Community Council scheduled to be held in September, 2001.
- B. Moved by Councillor Flint: The Midtown Community Council recommends that Council:
 - (1) grant a Boulevard Café Licence as prepared by Legal Services for The Bistro on Avenue Road (1678 Avenue Road);
 - (2) direct the applicants to immediately reconfigure the café to meet the requirements of the licence and to pay the appropriate fees; and
 - (3) if the applicants do not immediately reconfigure and/or pay the requisite fees, direct staff to remove the structure.
- C. Moved by Councillor Minnan-Wong: That the foregoing motion (B) by Councillor Flint be amended by deleting from Recommendations (2) and (3) the word “immediately” and inserting at the end of Recommendation No. (2) “by November 1, 2001”.

The foregoing motion (A) by Councillor Mihevc failed on the following division of votes:

For: Councillor Mihevc;
Against: Councillors Flint, Minnan-Wong, Pitfield, and Walker.

(City Council on July 24, 25 and 26, 2001, had before it, during consideration of the foregoing Clause, a communication (July 20, 2001) from Mr. Rhys Richard Fockler requesting that City Council refer the Clause back to the Midtown Community Council for its next meeting on September 12, 2001, for full submissions from concerned stakeholders.)