



**STAFF REPORT  
ACTION REQUIRED  
Confidential Attachment**

## **218 Ossington Avenue – Minor Variance Appeal**

<b>Date:</b>	September 23, 2009
<b>To:</b>	City Council
<b>From:</b>	City Solicitor
<b>Wards:</b>	Ward 19- Trinity Spadina
<b>Reason for Confidential Information:</b>	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions. This report is subject to Solicitor-Client Privilege
<b>Reference Number:</b>	

### **SUMMARY**

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The purpose of this report is to provide direction to the City Solicitor with respect to an Ontario Municipal Board hearing and related motion.

This matter could be scheduled to be heard before the Ontario Municipal Board on short notice and prior to the next Council meeting. Consequently, this is a time sensitive matter that cannot first be considered by the Toronto and East York Community Council.

### **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. Council adopt the confidential recommendations contained in Attachment 1.
2. Council authorize the public release of the recommendations in Attachment 1 at the end of this Council meeting, if they have been adopted.

### **FINANCIAL IMPACT**

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The recommendations will have no financial impact beyond what has already been approved in the current year's budget.

## **DECISION HISTORY**

In a decision dated August 26, 2009, the Committee of Adjustment refused an application submitted by Weir Foulds LLP on behalf of the owners of 218 Ossington Avenue for variances from both City of Toronto Zoning By-law 438-86 and the ICBL to permit an outdoor patio at the rear of an existing restaurant.

## **ISSUE BACKGROUND**

The applicants are seeking the following zoning variances: (1) an exemption from the requirement for 1 parking space for the residential unit on the second floor of the building, and (2) permission for a patio at the rear of the building with a set back of 5.49 metres from the abutting residential district whereas a 10 metre setback is required. (3) The applicants also want a variance from Interim Control By-law 547-2009 which prohibits patios.

City Planning staff submitted a report dated August 18, 2009 to the Committee of Adjustment with respect to this application, recommending that the application be deferred sine die, to allow staff the opportunity to complete a restaurant study on Ossington Avenue, or alternatively that the application be refused. A copy of the Staff Report is attached hereto as Schedule "A".

On August 24, 2009, the applicant submitted a letter to the Committee of Adjustment advising that it was prepared to revise its application by requesting that the approval be subject to conditions that would: (1) require the patio to be constructed in accordance with the plans submitted to the Committee of Adjustment that show a total area of 38 square metres and ensure a buffer of 5.49 metres between the edge of the patio and the edge of the residential area, (2) prohibit any music, artificial or amplified sound from being played on or projected into the patio, (3) restrict the hours of operation from 11:00 a.m. to 11:00 p.m., and (4) that the minor variances be permitted for a period of one year, expiring on October 1, 2010.

At the Committee of Adjustment hearing of August 26, 2009, the applicant, with City Planning's consent, requested a deferral of the matter to allow City Planning staff to consider the revised application. The Committee did not grant a deferral and refused the variances.

On September 11, 2009, the applicant appealed the decision of the Committee of Adjustment.

## **COMMENTS**

The City Solicitor has not received instructions with respect to the Ontario Municipal Board hearing as it relates to the variances. This report seeks instructions respecting the appeal.

The confidential attachment requests that City Council provide direction to the City Solicitor in respect of the minor variance appeal hearing at the Board.

## **CONTACT**

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## **SIGNATURE**

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Anna Kinastowski, City Solicitor

## **ATTACHMENTS**

1. Attachment 1 – Confidential Information



Schedule "A"

**STAFF REPORT**  
**Committee of Adjustment**  
**Application**

<b>Date:</b>	August 18, 2009
<b>To:</b>	<b>Chair and Members of the Committee of Adjustment Toronto and East York District</b>
<b>From:</b>	Director, Community Planning, Toronto and East York District
<b>Ward:</b>	Ward 19, Trinity-Spadina
<b>Reference:</b>	File No: A0421/09TEY Address: 218 Ossington Avenue Applicant: Nicolette Potter and Sam Papatragiannis Agent: Nicolette Potter Application to be heard: August 26, 2009

## **RECOMMENDATION**

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It is recommended that the Committee defer application No. A0421/09TEY sine die to allow staff an opportunity to complete a restaurant study on Ossington Avenue. However, should the Committee choose to consider the application, it is recommended that application be refused.

## **APPLICATION**

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This application proposes to construct an outdoor rear yard patio, to be used in connection with the restaurant on the main floor of the existing two-storey mixed-use building. A variance is requested with respect to the distance between the patio in the rear yard and the abutting R district. A restaurant patio in the rear yard is required to be a minimum of 10 metres from an R district, whereas the applicant is proposing a setback of 3.96 metres which does not meet this criterion.

The applicant is also seeking relief from the new Interim Control By-law prohibiting restaurants or any accessory uses on this section of Ossington Avenue. This by-law was enacted very recently on May 26, 2009.

## **COMMENTS**

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City Council recently approved an Interim Control By-law on the portion of Ossington Avenue between Queen Street West and Dundas Street West. This portion of Ossington Avenue is an area in transition from a street that was once primarily industrial to one that is more commercial and residential in nature. Recently there have been a large number of restaurants opening on this stretch of Ossington Avenue and as a result, Council has imposed the Interim Control By-law to allow staff an opportunity to study the impacts that these restaurants and associated patios are having on the community. These restaurants, along with the patios, are generating community concerns with respect to noise, vandalism, disruptive behaviour, late night activity and parking congestion.

Given the development pressures generated by restaurants and the growing popularity of Ossington Avenue as a regional draw, Council found merit in reviewing the collective impact of restaurants and similar uses on the area. The study will review:

- the precise type of conflicts and their source;
- whether current zoning provisions are sufficient to address these conflicts;
- whether the applicable zoning by-law should be amended to address these conflicts; and
- new enforcement strategies.

Currently, there are certain conditions which are generally applied to any restaurant patio approval through the Minor Variance approval process. These conditions are imposed in an attempt to limit the impacts of these patios on adjacent residential properties. The recommended study will help staff understand if these conditions are appropriate and if there are additional conditions needed to further protect the stable residential neighbourhoods located nearby. Staff are hesitant to recommend such conditions to this application when a study is in the process of attempting to identify what the appropriate restrictions on restaurant patios should be including whether they should be adjacent to residential districts. Staff is recommending that the study be completed before any decision is rendered.

## **CONTACT**

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## **SIGNATURE**

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Raymond David

Director, Community Planning, Toronto and East York District

Copy: Councillor Joe Pantalone, Ward 19 Trinity-Spadina  
Nicolette Potter, agent