SUMMARY

At its May 10, 2016 meeting, Toronto and East York Community Council deferred an appeal of the denial of a Boulevard Café Permit for 590 Pape Avenue, Wroxeter Avenue flankage. In its Decision, Community Council directed that City Planning staff determine if the proposed patio was approved as an eating establishment in the 2014 Committee of Adjustment decision, and if not, what further steps would be required to establish that use on the patio, and to report back to the June 14, 2016 meeting of Toronto and East York Community Council on the findings.

Staff have reviewed the Committee of Adjustment's decision and confirm that the approval related to an eating establishment. No further steps are required from a planning perspective to permit that use on the patio.

RECOMMENDATIONS

The City Planning Division recommends that:

1. This report be received for information.

Financial Impact
There are no financial implications.
DECISION HISTORY
On October 9, 2014, Toronto and East York Committee of Adjustment approved on condition a request for variances respecting 590 Pape Avenue, to permit alterations to the existing two-storey semi-detached mixed-use building by converting the existing hair salon on the ground floor into an eating establishment (File No. A0744/14TEY – please see Attachment 1).

On December 24, 2015, an application was received for a boulevard café on the Wroxeter Avenue flankage of 590 Pape Avenue. This application was refused, and that refusal appealed, in February of 2016. Community Council's consideration of this item, including a link to the April 22, 2016 Municipal Licensing and Standards (MLS) Staff Report respecting the refusal appeal, may be viewed here:

ISSUE BACKGROUND
In 2014, the owner requested variances to By-law 569-2013 for rear yard soft landscaping and to permit an eating establishment in a Residential Zone. Variances were also required to By-law 438-86 to reduce landscaped open space requirements and to permit an eating establishment in a R2 Z0.6 zone. The Committee of Adjustment allowed on condition the requested variances, provided that Urban Forestry was satisfied prior to issuance of a building permit; that the eating establishment be constructed substantially in accordance with the plans filed with the Committee (including a limitation on interior seating area); and that the hours of operation of the eating establishment were not later than 10:00pm Monday to Sunday.

The owner subsequently submitted plans in support of an application for a boulevard café permit to MLS. This application was denied as the boulevard café does not meet the required clearance for cafes located on a residential flank of 25 metres from a residential zone.

The owner appealed MLS's refusal to issue a permit. This matter was considered, and a decision deferred, by Toronto and East York Community Council. In its decision, Community Council requested that City Planning staff determine if the proposed patio was approved as an eating establishment in the 2014 Committee of Adjustment decision, and if not, what further steps would be required to establish that use on the patio. Staff were directed to report back to the June 14, 2016 meeting of Toronto and East York Community Council on the findings.

COMMENTS
The 2014 Committee of Adjustment variance application requested variances to landscaping and use permissions under both the former City of Toronto By-law 438-86 and the consolidated City of Toronto By-law 569-2013. Respecting the use variances, the request was to permit an eating establishment under both by-laws.
The Zoning Certificate prepared in advance of the variance application identified that eating establishment and patio uses are not permitted in the relevant residential zone categories under By-law 438-86 and 569-2013. By-law 438-86 includes patios as a subsidiary use associated with a primary use such as a restaurant. By-law 569-2013 includes outdoor patios as a discrete use category with its own set of permissions and conditions, but still requires these be an ancillary use to a primary use such as an eating establishment. Uses ancillary to a permitted use on the same lot are permitted provided they comply with regulations of the zone in which the lot is located. There are no conditions related to an outdoor patio use in residential zones, as such are not a permitted use as of right.

Planning staff have consulted with Toronto Buildings staff on the Committee of Adjustment's decision and its impacts. Staff confirm that by permitting an eating establishment, the Committee of Adjustment also permitted an ancillary outdoor patio at the site.

The proposed patio shown in Appendix 1 to the April 22, 2016 MLS report appears to be substantially in accordance with the Ground Floor Plan the Committee of Adjustment referenced in the conditions to its 2014 approval. Interior space is not dimensioned in the plan attached to the MLS report, but staff note the 2014 variance condition requires it be limited to not more than 46 square metres.

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SIGNATURE

Gregg Lintern, MCIP, RPP
Director, Community Planning
Toronto and East York District

ATTACHMENTS
Attachment 1: Committee of Adjustment Decision
NOTICE OF DECISION
MINOR VARIANCE/PERMISSION
(Section 45 of the Planning Act)

File Number: A0744/14TEY
Owner(s): GEORGE PARASKEVOPOULOS
VOULA PARASKEVOPOULOS
Agent: BARRY MUSKOVITCH
Property Address: 590 PAPE AVE
Legal Description: PLAN M245 LOT 11 & I
Zoning: R(d0.6)(x736) & R2 Z0.6 (ZZC)
Ward: Toronto-Danforth (30)
Community: Toronto

Notice was given and a Public Hearing was held on Thursday, October 9, 2014, as required by the Planning Act.

PURPOSE OF THE APPLICATION:
To alter the existing two-storey semi-detached mixed-use building by converting the existing hair salon on the ground floor into an eating establishment.

REQUESTED PERMISSION:
The property has lawful non-conforming status under the Planning Act, as the current retail use is not permitted on the land zoned R(d0.6)(x736) & R2 Z0.6. Any change of use, alterations or additions to the building requires the permission of the Committee of Adjustment.

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

1. Chapter 10.5.50.10.(3)(A), By-law 569-2013
   A lot with a residential building, other than an apartment building, is required a minimum of 50% of the rear yard for soft landscaping (37.96 m²).
   The rear yard will have 31.7% of soft landscaping (24.04 m²).

2. Chapter 10.10.20.10.(1), By-law 569-2013
   The existing retail use is a legal non-conforming use in a Residential Zone.
   The new eating establishment is not permitted use in a Residential Zone.

1. Section 6(1)(A), By-law 438-86
   The existing retail use is legal non-conforming use in a Residential Zone.
   The new eating establishment is not permitted use in a R2 Z0.6 zone.
2. Section 6(3) Part III 1(A), By-law 438-86
A minimum of 30% of the lot area shall be maintained as landscaped open space (57.02 m²).
In this case, 21.9% of the lot area will be maintained as landscaped open space (41.62 m²).

A0744/14TEY

IT WAS THE DECISION OF THE COMMITTEE OF ADJUSTMENT THAT:

The Minor Variance Application is Approved on Condition

It is the opinion of the Committee of Adjustment that, subject to the condition(s), the request:
(i) maintains the general intent and purpose of the Official Plan;
(ii) maintains the general intent and purpose of the Zoning By-law;
(iii) represents desirable and appropriate development of the land; and.
(iv) is minor; and
(v) has met the requirements of subsections 45(2)(a)(i)(ii) of the Planning Act.

This decision is subject to the following condition(s):

(1) Prior to the issuance of a demolition and/or building permit, the applicant shall satisfy all matters relating to City and privately owned trees, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review.

(2) The restaurant shall be constructed substantially in accordance with the Ground Floor Plan on file with the Committee of Adjustment, date stamped received on August 3, 2014, with a maximum interior seating area of 46 m².

(2) The hours of operation of the eating establishment shall not be later than 10:00 p.m. Monday to Sunday.
SIGNATURE PAGE

File Number: A0744/14TEY  Zoning: R(d0.6)(x736) & R2 Z0.6 (ZZC)
Owner(s): GEORGE PARASKEVOPOULOS  VOULA PARASKEVOPOULOS  Ward: Toronto-Danforth (30)
Agent: BARRY MUSKOVITCH
Property Address: 590 PAPE AVE  Community: Toronto
Legal Description: PLAN M245 LOT 11 & I

Gillian Burton (signed)       David Pond (signed)       Yim Chan (signed)

John Tassiopoulos (signed)

DATE DECISION MAILED ON: Tuesday, October 14, 2014

LAST DATE OF APPEAL TO THE ONTARIO MUNICIPAL BOARD: Wednesday, October 29, 2014

CERTIFIED TRUE COPY

Anita M. MacLeod  
Manager & Deputy Secretary-Treasurer  
Toronto and East York Panel

To appeal this decision to the Ontario Municipal Board, send a completed OMB Appellant Form (A1) to the Manager & Deputy Secretary-Treasurer, Committee of Adjustment. You must pay a filing fee of $125.00, by certified cheque or money order, in Canadian funds, payable to the Minister of Finance. An additional reduced fee of $25.00 is required for each connected appeal filed by the same appellant. To obtain a copy of Appellant Form (A1) and other information about the appeal process please visit the Ontario Municipal Board web site at www.omb.gov.on.ca.