

95-107 Danforth Avenue and 749 Broadview Avenue - Zoning Amendment Application - Final Report

Date: July 24, 2020

To: City Council

From: Chief Planner and Executive Director, City Planning

Ward 14 - Toronto-Danforth

SUMMARY

The City of Toronto has received a request from the Macedonian Village Ltd. for a rear yard outdoor patio associated with an eating establishment at 107 Danforth Avenue. The rear yard outdoor patio would be located on the property municipally known as 95-107 Danforth Avenue and would extend into the property at 749 Broadview Avenue. The same landowner owns these properties. This report recommends a temporary use by-law pursuant to Section 39 of the Planning Act pertaining to the properties municipally known as 95-107 Danforth Avenue and 749 Broadview Avenue, to permit a rear yard outdoor patio for the eating establishment located at 107 Danforth Avenue.

The proposed temporary use by-law is generally in keeping with the intent of the CaféTO program and the Ministerial Zoning Order, Ontario Regulation 358/20, both of which permit the expansion of outdoor patios where eating establishments are permitted. The goal of both of these initiatives is to support local eating establishments as they re-open following closures resulting from COVID-19.

Further, a provincial Regulation under the Emergency Management and Civil Protection Act (EMCPA) amends S. 39 of the Planning Act by removing notice requirements and appeal rights to temporary use by-laws that authorize outdoor patios associated with eating establishments.

The by-law would allow an outdoor patio, with restrictions, to be provided in the rear yard of 95-107 Danforth Avenue and 749 Broadview Avenue. The temporary use by-law is proposed as a site-specific amendment to the city-wide harmonized Zoning By-law (569-2013) and also to the former City of Toronto By-law (438-86). The by-law is proposed to expire on November 16, 2020, to coincide with the end of the CaféTO program and the Ministerial Zoning Order.

The proposed by-law is consistent with the Provincial Policy Statement (2020) and conforms with A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019).

RECOMMENDATIONS

The Chief Planner and Executive Director, City Planning, recommends that:

1. City Council enact the zoning by-law amendment substantially in accordance with Attachment 2 to the report from the Chief Planner and Executive Director, City Planning Division, dated July 24, 2020.
2. City Council authorize the City Solicitor to make such stylistic and technical changes to the zoning by-law amendment as may be required.

FINANCIAL IMPACT

The City Planning Division confirms that there are no financial implications resulting from the recommendations included in the report in the current budget year or in future years.

DECISION HISTORY

CaféTO Program

A report titled "CaféTO - Increasing Outdoor Dining Space for Toronto Restaurants and Bars" was City Council adopted on June 29, 2020. The report provided a package of recommendations that collectively pause certain elements of Chapter 742 (Sidewalk Cafés, Parklets and Marketing Displays), which sets out a permitting system for sidewalk cafés. The goal of the CaféTO program is to support local restaurants and bars and their employees by allowing the expeditious and wide-spread roll-out of café extensions in the public right-of-way, during an expected period of time when they will be under considerable occupancy constraints. The report can be viewed at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.EX14.1>

Ministerial Zoning Order, Ontario Regulation 358/20

On July 8, 2020, the Ministry of Municipal Affairs and Housing filed Ontario Regulation 358/20, a Ministerial Zoning Order under the Planning Act, which cannot be appealed and is revoked on November 16, 2020. This Order has a number of effects including permitting outdoor patios to be used in combination with an eating establishment on any lot in the City of Toronto where eating establishments are permitted. The outdoor patio must be located on the same lot as the eating establishment with which it is associated. The Order also provides relief from certain zoning restrictions, including permission to occupy space that would otherwise be required for parking and an increase to the permitted maximum area of outdoor patios.

PROPOSAL

City Planning staff received a request for a temporary outdoor patio associated with the eating establishment located at 107 Danforth Avenue. The rear yard outdoor patio would be located on the property municipally known as 95-107 Danforth Avenue and would extend into the property municipally known as 749 Broadview Avenue. These properties are owned by the same landowner. For main street restaurant businesses, temporary patios are being established in the right of way under the CafeTO program, however this location is quite close to the intersection of Broadview Avenue and Danforth Avenue so this option is not available. A temporary patio in the rear yard is the alternative approach requested in this case.

In response to the request, staff are proposing a temporary use by-law to allow this request. The site is zoned CR (Commercial Residential) under Zoning By-law 569-2013, which allows both an eating establishment and outdoor patio.

Under the Zoning By-law, conditions apply to outdoor patios when they are used in combination with an eating establishment. These conditions include, among others, requiring that an outdoor patio be set back 30 metres from a lot in the Residential Zone category. The proposed outdoor patio would be set back approximately 10 metres from the nearest residentially zoned lot instead of the required 30 metres.

The site-specific temporary use by-law would make amendments to the city-wide harmonized Zoning By-law (569-2013) and also to the former City of Toronto By-law (438-86) as they pertain to the site at 95-107 Danforth Avenue and 749 Broadview Avenue so as to allow the eating establishment located on 107 Danforth Avenue to have a rear yard outdoor patio. The temporary use by-law would be subject to restrictions prohibiting entertainment uses.

The proposed by-law specifies an expiration date (November 16, 2020) which coincides with the proposed conclusion of the CaféTO program and the Ministerial Order. On that date, the current zoning restrictions on outdoor patios would resume.

APPLICATION BACKGROUND

Zoning Restrictions on Private Patios

Outdoor patios on private property are regulated by zoning. The harmonized city-wide Zoning By-law (569-2013) includes regulations that consider outdoor patios not to be primary land uses, but rather ancillary to restaurants and bars (among other uses) and generally subordinate to indoor space.

Zoning permissions for outdoor patios are limited to many (but not all) zones where eating establishments and take-out eating establishments are permitted. For most zones, regulations limit the maximum size of an outdoor patio to 30 square metres, or 30 percent of the interior floor area of the associated establishment, whichever is greater. In addition to the size limitation, zoning regulations manage the potential impact

of the patio on nearby properties through setback requirements, rear-yard fencing requirements, a prohibition on entertainment, and limitations on outdoor patios located above the first storey (e.g. rooftop patios).

Temporary Use By-laws

Section 39 of the Planning Act provides authority to municipalities to pass temporary use by-laws. Such a by-law is a zoning by-law to authorize the temporary use of land, buildings or structures for any purpose that is otherwise prohibited by the municipality's zoning. At times, it is in the public interest to permit lands to be used for a particular use on a temporary basis, even though the use may not comply with the Official Plan or zoning by-law. A temporary use by-law must define the area to which it applies and specify the time period in which it will be in force. Chapter 5.1.5 of the Official Plan addresses temporary use by-laws. A provincial Regulation under the Emergency Management and Civil Protection Act (EMCPA) amends S. 39 of the Planning Act by removing notice requirements and appeal rights to temporary use by-laws that authorize outdoor patios associated with eating establishments.

COMMENTS

Role of Outdoor Patios in 2020

Policy 1 of Chapter 3.5.1 of the Official Plan states that Toronto's economy will be nurtured and expanded by maintaining a strong and diverse economic base. The restaurant industry is an essential contributor to the life and vitality of Toronto's streets and has been particularly affected as a result of the COVID-19 pandemic closures.

Rationale

Eating establishments are permitted in the CR zone where the subject site at 95-107 Danforth Avenue and 749 Broadview Avenue are located. The outdoor patio is approximately 10 metres setback from the nearest residentially zoned property, which is 739-743 Broadview Avenue. To be more precise, the property at 739-743 Broadview Avenue has split zoning, the western portion of the property, fronting on Broadview Avenue, is zoned CR (commercial residential) and would therefore comply with the Zoning By-law conditions for outdoor patios; however, the rear, easterly portion of the property is zoned R (residential) and would not comply with the Zoning By-law conditions for outdoor patios. The use of this rear residential portion includes a private driveway that leads to a surface parking lot utilized by the commercial portion of 739-743 Broadview Avenue. Other properties that are zoned residentially and which have a more traditional low-rise residential character, are setback approximately 17 metres to the east and 24 metres to the south of the proposed rear yard outdoor patio.

Planning staff consider the request for the temporary use by-law appropriate given that the residential use that is 10 metres from the proposed outdoor patio is a surface parking lot utilized by a commercial property. Moreover, the residential properties to the

east that are within 17 metres and the residential properties to the south which are 24 metres of the outdoor rear yard patio are locations for detached garages. The proposed temporary use by-law also conforms to the Official Plan by supporting an important economic sector on a temporary basis and generally meets the intent of outdoor patio conditions in the Zoning By-law. Finally, various conditions, including closing the patio at 10 PM from Sunday to Thursday and 11 PM from Friday to Saturday and installing a 2.5 metre high fence will further mitigate issues such as noise and privacy.

Conclusion

City Planning staff are recommending a temporary use by-law to allow a rear yard outdoor patio associated with an eating establishment located at 107 Danforth Avenue. This outdoor patio would extend into the property at 749 Broadview Avenue, which is owned by the same landowner as 107 Danforth Avenue. The by-law conforms to the Official Plan and generally meets the intent of the Zoning By-law for outdoor patios associated with eating establishments. This temporary use by-law will provide an opportunity for the eating establishment on the subject site to create a temporary rear yard patio, to support this business's ability to continue operations while meeting requirements related to the COVID-19 pandemic. The temporary use by-law would expire on November 16, 2020.

CONTACT

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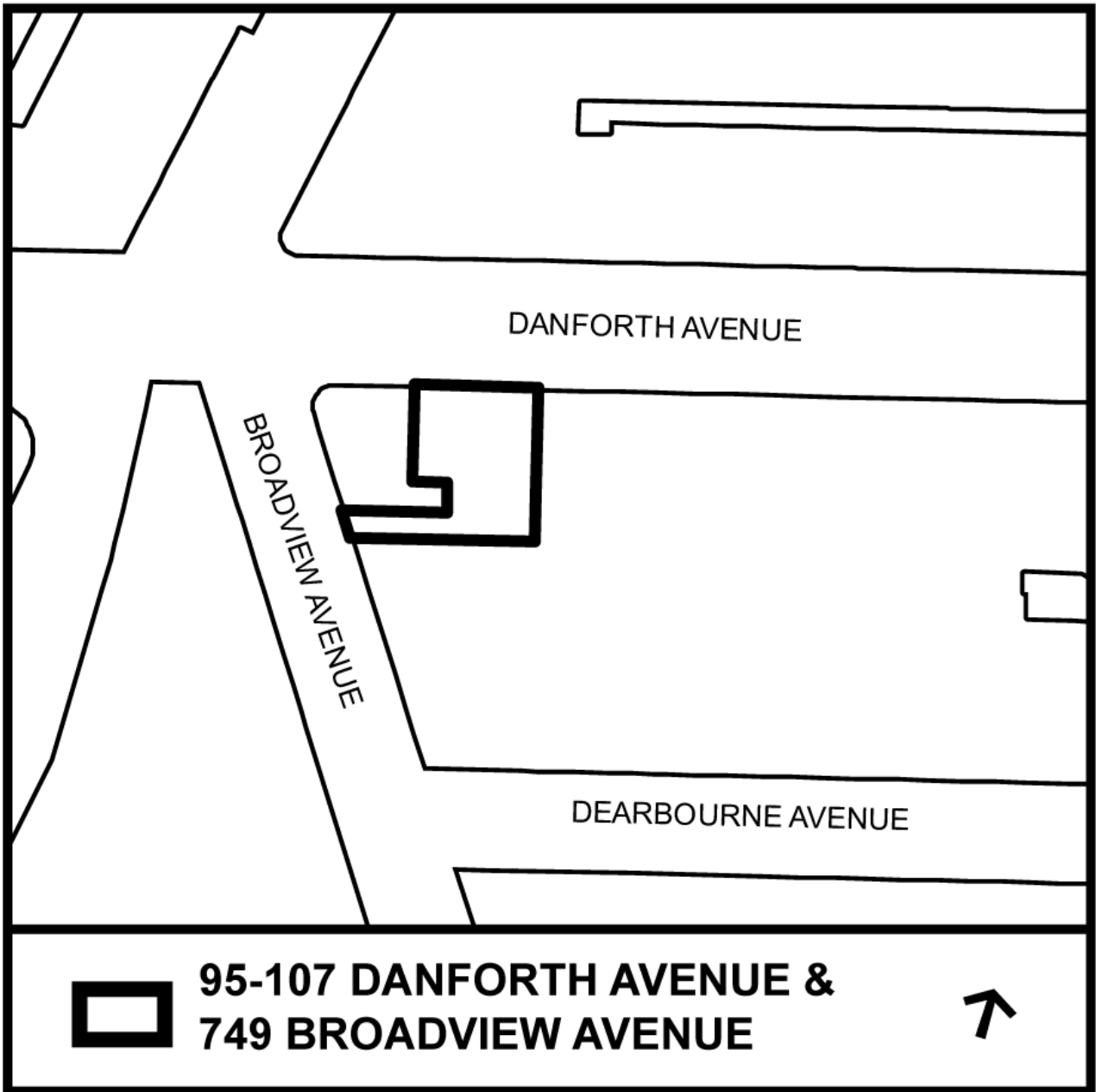
SIGNATURE

Gregg Lintern, MCIP, RPP
Chief Planner and Executive Director
City Planning

ATTACHMENTS

City of Toronto Data/Drawings
Attachment 1: Location Map
Attachment 2: Draft Zoning By-law

Attachment 1: Location Map



Attachment 2: Draft Zoning By-law Amendment

Authority: City of Toronto Council Item ~ as adopted on ~, 20~
Enacted by Council: ~, 20~

CITY OF TORONTO

Bill No. ~

BY-LAW No. --2020

To temporarily modify zoning restrictions affecting outdoor patios with respect to the lands municipally known in the year 2020 as 95-107 Danforth Avenue and 749 Broadview Avenue

Whereas Council of the City of Toronto has the authority pursuant to Section 34 of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, to pass this By-law;

Whereas pursuant to Section 39 of the *Planning Act*, the Council of a Municipality may, in a by-law passed under Section 34 of the *Planning Act*, authorize the temporary use of land, buildings or structures for any purpose set out therein that is otherwise prohibited in the by-law;

Whereas Ontario Regulation 345/20 under the *Emergency Management and Civil Protection Act* exempts a by-law authorizing the temporary use of land for a restaurant or bar patio under Section 39 of the *Planning Act* from subsections 34(12) to (14.3), (14.5) to (15) and (19) of that Act and paragraphs 4 and 5 of subsections 6 (9) of Ontario Regulation 545/06 under that Act;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. The lands subject to this By-law are outlined by heavy black lines on Diagram 1 attached to this By-law.
2. This By-law expires on November 16, 2020.
3. The words highlighted in bold type in this By-law have the meaning provided in Zoning By-law No. 569-2013, Chapter 800 Definitions.
4. The words highlighted in italic type in this By-law have the meaning provided in Zoning By-law No. 438-86, Section 2(1).
5. Nothing in City of Toronto Zoning By-law 569-2013, as amended, applies to prevent the use of an **outdoor patio** on the lands subject to this By-law provided that any **outdoor patio**:
 - a. is combined with an **Eating Establishment** located within the lands subject to this By-law;
 - b. is not used to provide entertainment such as performances, music and dancing; and

c. must have a fence installed along the portion of the **outdoor patio** parallel to the **rear lot line**.

6. Nothing in Former City of Toronto Zoning By-law 438-86, as amended, applies to prevent the use of a *patio* on the lands subject to this By-law provided that any *patio*:

a. is combined with a *restaurant* located within the lands subject to this By-law;

b. is not used to provide entertainment such as performances, music and dancing; and

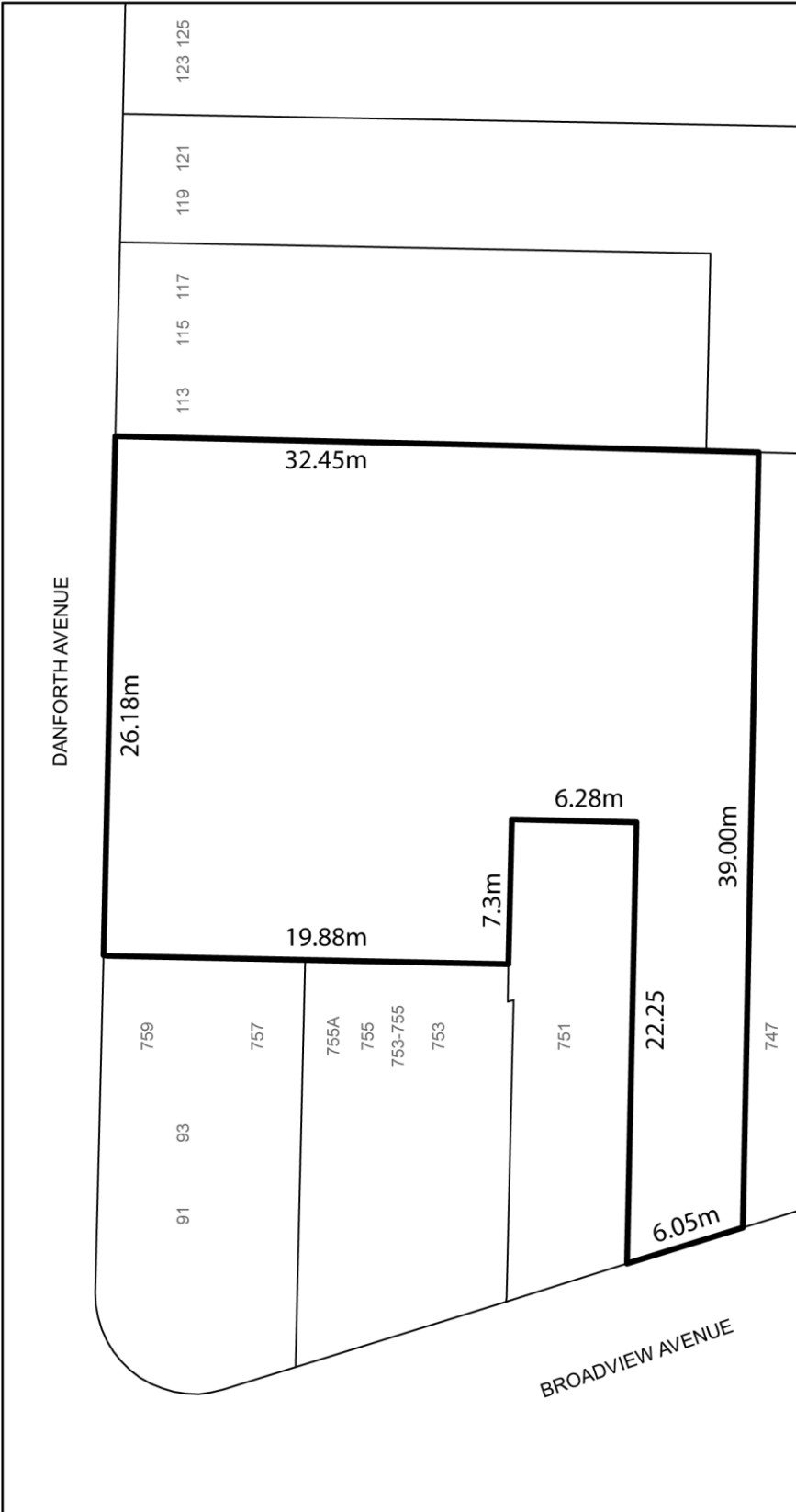
c. must have a fence installed along the portion of the *patio* parallel to the *rear lot line*.

ENACTED AND PASSED this ~ day of ~, A.D. 20~.

JOHN TORY,
Mayor

ULLI S. WATKISS,
City Clerk

(Corporate Seal)



95-107 Danforth Avenue and 749 Broadview Avenue

File # 20 171551 STE 14 0Z



City of Toronto By-law 569-2013
Not to Scale
07/23/2020