

1012-1018 Gerrard Street East – Zoning Amendment– Final Report

Date: July 28, 2020

To: Toronto City Council

From: Chief Planner and Executive Director, City Planning

Wards: Ward 14 - Toronto-Danforth

SUMMARY

This report recommends a temporary use by-law pursuant to Section 39 of the Planning Act pertaining to 1012-1018 Gerrard Street East, to permit an outdoor patio to support businesses located on the subject site, and on the adjacent portion of Gerrard Street East between Marjory Avenue and Jones Avenue.

The proposed temporary use by-law complements the CaféTO program which allows expanded patios on City boulevards and rights-of-way, approved by City Council on June 29, 2020.

As well, a Ministerial Zoning Order, Ontario Regulation 358/20, was filed on July 8, 2020, 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 however must be located on the same lot as the eating establishment with which it is associated. The Ministerial Zoning Order cannot be appealed and will be revoked on November 16, 2020, coinciding with the end of the CaféTO program. 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 proposed site-specific temporary use by-law at 1012-1018 Gerrard Street East and along the adjacent portion of Gerrard Street East between Marjory Avenue and Jones Avenue complements the CaféTO program and the Ministerial Order in supporting the ability of nearby eating establishments to respond to physical distancing requirements associated with the COVID-19 pandemic, by increasing the amount of outdoor space for patrons.

The by-law would allow an outdoor patio, with restrictions, to be provided at 1012-1018 Gerrard Street East for restaurants located in the plaza at that address, as well as in conjunction with nearby restaurants and bars which themselves are not located on the

subject site. The temporary use by-law is proposed as a site-specific amendment to the former City of Toronto Zoning 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. Under the EMCPA Regulation, notice of this by-law is not required, nor can it be appealed.

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 27, 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.

The Deputy City Manager and Chief Financial Officer have reviewed this report and agree with the financial impact information.

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

Staff are proposing a temporary use by-law to allow an outdoor patio associated with eating establishments located on the subject site, also to serve nearby eating establishments along Gerrard Street East between Marjory Avenue and Jones Avenue.. The patio would be in front of the existing building at 1012-1018 Gerrard Street East, in what is currently the plaza's parking lot. This area would temporarily cease as a parking lot to accommodate the proposed outdoor patio.

Ministerial Zoning Order O.Reg 358/20 permits 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 site at 1012-1018 Gerrard Street East is located in the Commercial Residential Zone (CR) where eating establishments are permitted. However, as with the Ministerial Order, any outdoor patios associated with an eating establishment in the CR zone must be located on the same lot as the eating establishment.

The site-specific temporary use by-law would amend the former City of Toronto Zoning By-law (438-86) as it pertains to the site at 1012-1018 Gerrard Street East, to allow eating establishments not located at 1012-1018 Gerrard Street East to utilize this site for an outdoor patio. It would also provide relief from the requirement that a patio be setback at least 30 metres from lands with residential zoning, as the subject patio is within approximately 20 metres of lands with residential zoning along Marjory Avenue.

The temporary use by-law would be subject to restrictions prohibiting entertainment uses, limiting operating hours, prohibiting amplified sound, prohibiting permanent structures, prohibiting outdoor cooking elements, and requiring setbacks from Gerrard Street East and Marjory Avenue to keep any patron queuing off the adjacent public sidewalk.

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 former City of Toronto Zoning By-law (438-86) 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 **in the CR** zone limit the maximum size of an outdoor patio to the greater of 50 square metres or 50 percent of the interior floor area of the associated establishment. In addition to the size limitation, zoning regulations manage the potential impact of the patio on nearby properties through setback requirements, 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 1012-1018 Gerrard Street East is located. The patio is proposed on what is currently a surface parking fronting onto Gerrard Street East. This segment of Gerrard Street East contains a high concentration of eating establishments which are currently unable to meet their standard patron capacity targets due to social distancing requirements of the COVID-19 pandemic.

The proposed temporary use by-law conforms to the Official Plan by supporting an important economic sector on a temporary basis consistent with the requirements of the Ministerial Zoning Order and the CaféTO program. As the temporary use by-law is site-specific and is in an area of the City where eating establishments commonly have large interior spaces, the temporary use by-law will not restrict the permitted size of the outdoor patios. The patio is proposed to be subject to conditions, including closing the patio at 10 PM from Sunday to Thursday and 11 PM from Friday to Saturday and prohibiting amplified sound, to mitigate potential noise issues.

Conclusion

City Planning staff are recommending a temporary use by-law to allow outdoor a patio associated with eating establishments located on 1012-1018 Gerrard Street East, to also serve eating establishments along Gerrard Street East between Marjory Avenue and Jones Avenue.

The by-law complements the CaféTO program as well as the Ministerial Zoning Order Ontario Regulation 358/20 by providing an opportunity for eating establishments to create temporary patios on a nearby site, thereby shifting their capacity from indoor space to outdoor patios, as they adjust to physical distancing requirements related to the COVID-19 pandemic. The temporary use by-law would expire on November 16, 2020.

CONTACT

Nader Kadri, Planner, Community Planning
Tel. No. 416-338-5324
E-mail: Nader.Kadri@toronto.ca

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



