

67 Front Street East and 94 The Esplanade - Zoning Amendment - Final Report

Date: November 16, 2020

To: City Council

From: Chief Planner and Executive Director, City Planning

Ward 13 - Toronto Centre

SUMMARY

The City of Toronto has received a request from the restaurant, C'est What, for an outdoor patio space to be located at the property municipally known as 94 The Esplanade. C'est What is located at 67 Front Street East and would like to convert the southern half of the surface parking lot at 94 The Esplanade for a temporary outdoor patio space during the COVID-19 pandemic. The same landowner owns both properties.

This report recommends a temporary use by-law pursuant to Section 39 of the Planning Act pertaining to the southern half of 94 The Esplanade to permit an outdoor patio to support the restaurant business located on 67 Front Street East.

The by-law would allow an outdoor patio, with restrictions, to be provided at 94 The Esplanade. Beverage service will be handled on-site and the food will be delivered to the table from the restaurant at 67 Front Street East, which is the building that is immediately adjacent to 94 The Esplanade, east of a public laneway that bisects the two properties.

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 May 25, 2021, after the conclusion of next year's Victoria Day long weekend.

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 (2020).

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 November 16, 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

City Council on June 29 and 30, 2020 requested the Minister of Municipal Affairs and Housing to provide, as quickly as possible, expanded permission for patios on private properties in Toronto to improve the economic health of the City of Toronto so that such permissions achieve the following objectives, and which shall be in effect until November 16, 2020:

- a) permitting surface outdoor patios in certain zones which permit eating establishments but not outdoor patios, subject to conditions to mitigate impact on nearby properties;
- b) removing restrictions in the Employment Industrial Zones of Zoning By-law 569-2013 which limit the amount of front yard an outdoor patio may occupy and which require a setback from the front lot line;
- c) allowing an outdoor patio to occupy space that would otherwise be required for parking; and,
- d) increasing the permitted maximum area of surface outdoor patios ancillary to eating establishments, take-out eating establishments and recreations uses from the greater of 30 square metres or 30 percent of the interior floor area, to the greater of 50 square metres or 50 percent of the interior floor area.

The City Council Decision can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.EX14.1>

On July 2, 2020, the Province of Ontario issued Ontario Regulation 345/20, which exempts a by-law that would authorize 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 subsection 6 (9) of Ontario Regulation 545/06. The effect of this regulation is that City Council may adopt a

temporary use by-law respecting a restaurant or bar patio without holding a statutory public meeting under the Planning Act and that such a by-law is not subject to appeal.

On July 8, 2020, the Province of Ontario issued Ontario Regulation 358/20, being Ministerial Zoning Order (MZO) to expand zoning permissions for outdoor patios in the City of Toronto, generally consistent with the June 29 and 30, 2020 request of City Council. The regulation expires on November 16, 2020.

At its meeting on July 28, 2020, City Council adopted a Final Report pertaining to the City-owned site at 229 Richmond Street West, recommending the following: 1) a temporary use by-law pursuant to Section 39 of the Planning Act to permit outdoor patios for eating establishments located on a lot within the area bounded by Richmond Street West on the north, Duncan Street on the east, Nelson Street on the south and John Street on the west (By-law 667-2020); and 2) the City enter into a licence extension and amending agreement with the abutting business owners to extend the licence term and waive the licence fee as set out in the licence agreement between the City and the abutting business owners dated July 17, 2020. The City Council decision can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MM23.27>

At its meeting on July 28, 2020, City Council adopted a Final Report pertaining to the site at 1012-1018 Gerrard Street East. The report recommended a temporary use bylaw (By-law 668-2020) pursuant to Section 39 of the Planning Act to permit an outdoor patio across the subject site for the benefit of the eating establishments located on a nearby portion of Gerrard Street East. The City Council decision can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MM23.34>

At its meeting on July 28, 2020, City Council adopted a Final Report pertaining to the site at 95-107 Danforth Avenue and 749 Broadview Avenue. The report recommended a temporary use by-law (By-law 669-2020) pursuant to Section 39 of the Planning Act to permit an outdoor patio across the subject site for the benefit of the eating establishment located at 107 Danforth Avenue. The City Council decision can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MM23.35>

At its meeting on October 27, 2020, City Council adopted a Final Report to extend the temporary zoning permissions for outdoor patios which were addressed by the MZO, as well as the temporary zoning by-laws for outdoor patios at 229 Richmond Street West, 1012-1018 Gerrard Street East, and 95-107 Danforth and 749 Broadview Avenue, from November 16, 2020 to May 25, 2021. The City Council decision can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.PH17.12>

PROPOSAL

City Planning staff received a request for a temporary outdoor patio associated with the eating establishment located at 67 Front Street East. The temporary outdoor patio would be located on the southern half of the property municipally known as 94 The Esplanade, which currently operates as a surface parking lot. 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 where Front Street East splits into Front Street East and Wellington Street East so this option is not available. Moreover, the space on the right of way would not be large enough to accommodate many patrons. A temporary patio located at 94 The Esplanade is the alternative approach requested in this case. In response to the request, staff are proposing a temporary use by-law to allow this outdoor patio. The subject sites are zoned CR (Commercial Residential) under Zoning By-law 569-2013, which allows both an eating establishment and outdoor patio.

The temporary use by-law would be subject to restrictions prohibiting entertainment uses, limiting operating hours, prohibiting amplified sound, prohibiting permanent structures, and prohibiting outdoor cooking elements.

The proposed by-law specifies an expiration date (May 25, 2021) which coincides with other temporary outdoor patios that recently received temporary outdoor patio permissions.

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 under the City-wide Zoning By-law 569-2013 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 dedicated to 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 outdoor patio at 94 The Esplanade will be located. The patio is proposed on what is currently a surface parking lot fronting onto The Esplanade. Because the restaurant at 67 Front Street East is currently unable to meet their standard patron capacity targets due to social distancing requirements of the COVID-19 pandemic, converting the surface parking lot into a temporary outdoor patio is supportable and desirable for the continued economic success of the restaurant at 67 Front Street East.

The proposed temporary use by-law conforms to the Official Plan by supporting an important economic sector on a temporary basis consistent with other temporary outdoor patios approved in July 2020. 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 patio. 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. The patio will also not be used for outdoor cooking. Temporary structures used for weather protection, such as tents, would be permitted.

Conclusion

City Planning staff are recommending a temporary use by-law to allow an outdoor patio at the southern half of 94 The Esplanade associated with eating establishment located at 67 Front Street East.

The by-law provides an opportunity for the eating establishment at 67 Front Street East to create a temporary patio on the adjacent lot at 94 The Esplanade, thereby expanding their capacity to include an outdoor patio, as they adjust to physical distancing requirements related to the COVID-19 pandemic. The temporary use by-law would expire on May 25, 2021.

CONTACT

George Pantazis, Senior Planner
Tel. No. 416-392-3566
E-mail: George.Pantazis@toronto.ca

SIGNATURE

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

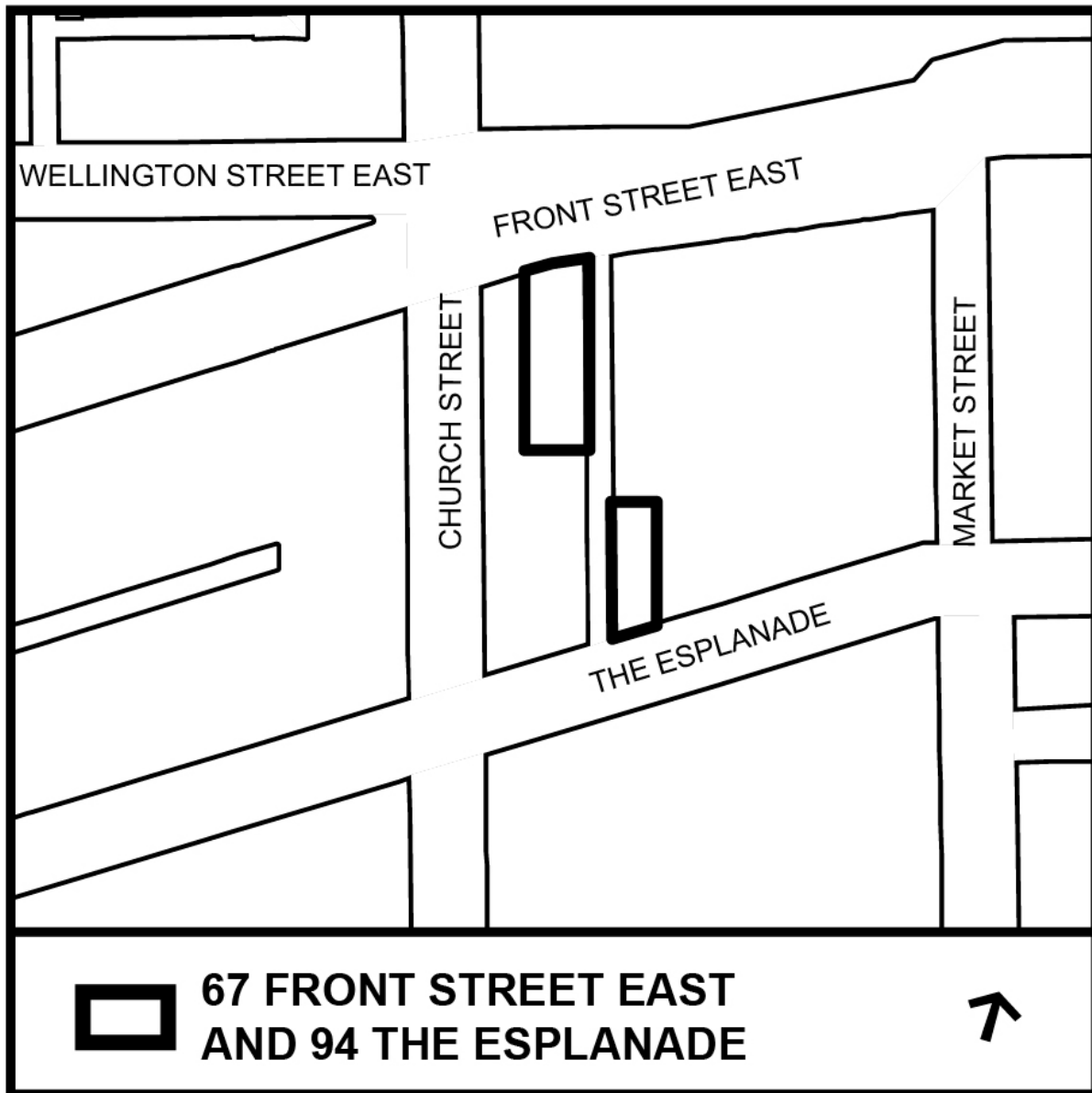
ATTACHMENTS

City of Toronto Data/Drawings

Attachment 1: Location Map

Attachment 2: Draft Zoning By-law

Attachment 1: Location Map



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 67 Front Street East and 94 The Esplanade

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 May 25, 2021.
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, as outlined in black on Diagram 2 attached 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, including prohibition on amplified sound;

c. is not used for outdoor cooking; and

d. may have temporary structures such as tents for the exclusive use of weather protection.

6. Nothing in the former City of Toronto Zoning By-law 438-86, as amended, applies to prevent the use of a patio on the lands, as outlined in black on Diagram 2 attached 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, including a prohibition on amplified sound;

c. is not used for outdoor cooking; and

d. may have temporary structures such as tents for the exclusive use of weather protection.

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

JOHN TORY,
Mayor

JOHN ELVIDGE,
City Clerk

(Corporate Seal)



Toronto
Diagram 1

67 Front Street East and 94 The Esplanade

File # 20 217237 STE 13 0Z

 Property Affected by this By-law


City of Toronto By-law 569-2013
Not to Scale
11/10/2020



Toronto
Diagram 2

67 Front Street East and 94 The Esplanade

File # 20 217237 STE 13 0Z

City of Toronto By-law 569-2013
Not to Scale
11/10/2020