

592 Gerrard Street East – Zoning Amendment – Final Report and Licence Arrangement

Date: July 15, 2021

To: Toronto City Council

From: Chief Planner and Executive Director, City Planning; Executive Director, Corporate Real Estate Management

Ward: 14 - Toronto-Danforth

SUMMARY

City Planning has received a request for a temporary use zoning by-law that would allow for an outdoor patio to be located in a Toronto Parking Authority (TPA) surface parking lot at 592 Gerrard Street East. There are no existing city uses or activities within the proposed patio area, with an existing bike share station along the frontage of the lot to remain.

A temporary use zoning by-law (TUBL) 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. A Provincial Regulation under the Emergency Management and Civil Protection Act (EMCPA) amends Section 39 of the Planning Act by removing notice requirements and appeal rights to TUBL that authorize outdoor patios associated with a restaurant or bar. Section 39 of the Planning Act provides authority to municipalities to pass TUBL.

The proposed TUBL described in this report would allow an outdoor patio on the surface parking lot located at 592 Gerrard Street East. 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) and the Official Plan.

RECOMMENDATIONS

The Chief Planner and Executive Director, City Planning, and the Executive Director, Corporate Real Estate Management, recommend that:

1. City Council enact the zoning by-law amendment substantially in accordance with Attachment 1 to the report from the Chief Planner and Executive Director, City Planning Division, and the Executive Director, Corporate Real Estate Management dated July 15, 2021.

2. The City be authorized to enter into a licence arrangement with a restaurant or restaurants in the vicinity of 592 Gerrard Street East, permitting the licensee(s) to establish an open dining area on the site, available for use by all members of the public and, in exchange for incurring the associated costs of providing tables, seating and maintaining such public area, allowing the licensee(s), to serve food and beverages to individuals making use of the area, where permitted by applicable law, subject to such terms as considered appropriate by the Executive Director, Corporate Real Estate Management, including any requirements under the CafeTO program or Municipal Code Chapter 742, Sidewalk Cafes, Parklets and Marketing Displays, which might be modified or adapted to be appropriate in the circumstances.

3. City Council direct that approval be contingent on the following conditions:

a) signage will be posted in a prominent location to remind people to be considerate of the surrounding community;

b) the patio be closed at 10 PM from Sunday to Thursday and 11 PM from Friday to Saturday;

c) a telephone number will be provided for neighbours to register concerns or complaints directly with licensee(s); and

d) there will be no outdoor music, performances and dancing, or amplified sound on the patio.

4. 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

Regulations Regarding Patios on Private Property

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.

On some properties where the City of Toronto Zoning By-law 569-2013 does not apply and the former municipal Zoning By-law remains in force, outdoor patio regulations may be more permissive than what is described above.

<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 TUBL 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 the 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.

At its meeting on October 27, 2020, City Council adopted a final report pertaining to temporary use zoning by-laws to expand permissions for outdoor patios for bars and restaurants pursuant to Section 39 of the Planning Act. The report recommended temporarily easing restrictions for patios on private property as they relate to zone restrictions, placement and surface area. City Council enacted By-law 906-2020 to temporarily ease restrictions on outdoor patios through zoning regulations that prevail over the former municipal zoning by-laws and By-law 910-2020 to temporarily ease restrictions specified in harmonized city-wide Zoning By-law 569-2013 affecting outdoor patios. By-laws 906-2020 and 910-2020 were to expire on May 25, 2021.

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

On March 10, 2021, City Council adopted replacement city-wide temporary use zoning by-laws to expand permissions for outdoor patios for bars and restaurants pursuant to Section 39 of the Planning Act, as per the October 27, 2020 decision above. The new temporary use by-laws are set to expire on April 14, 2022.

Where the city-wide temporary use zoning by-law would not support a temporary patio, City Council also enabled staff to bring forward City-initiated site-specific temporary use by-laws to provide site-specific zoning relief for outdoor patios located on private property, subject to certain conditions.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.PH21.7>

Site-specific By-laws

At its meeting on July 28, 2020, City Council enacted three site-specific temporary use by-laws, 907-2020, 908-2020 and 909-2020, which ease restrictions as they relate to location and the required distance from residential zones for patios associated with eating establishments located at 229 Richmond Street West, 1012-1018 Gerrard Street East, and 95-107 Danforth Avenue and 749 Broadview Avenue. These site-specific by-laws permit outdoor patios that would not have otherwise been permitted by the City's zoning by-laws nor by the Minister's Zoning Order. The by-laws had an expiration date of November 25, 2020.

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

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

<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 use 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>

At its meeting on November 25, 2020, City Council enacted a site-specific Temporary Use By-law, 1063-2020, to ease restrictions as they relate to the location of a patio at 94 The Esplanade, in an effort to support the eating establishment located at 67 Front Street East. The by-law was to expire on May 25, 2021.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MM26.14>

At its meeting on December 16, 2020, City Council enacted a site-specific Temporary Use By-law, 1182-2020, to ease restrictions as they relate to separation from a residential zone at 139-141 Danforth Avenue. The by-law was to expire on May 25, 2021. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.MM27.28>

At its meeting on March 10, 2021, City Council adopted a final report pertaining to the city-wide TUBLs, extending temporary permissions for outdoor patios for bars and restaurants as was previously done on October 27, 2020 and aligning their expiration with the CafeTO program (April 14, 2022). Previously approved site-specific TUBLs were also extended to April 14, 2022.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.PH21.7>

At its meeting on May 5, 2021, City Council enacted four site-specific temporary use by-laws. By-laws 402-2021, 403-2021 and 405-2021 ease restrictions that relate to location and the required distance from residential zones for patios associated with

three eating establishments: 1008-1010 Queen Street East, 1118 Queen Street East, and 1298 Queen Street East. By-law 404-2021 similarly eased restrictions for an eating establishment at 106-110 Broadview Avenue allowing an outdoor patio space to be located in a privately owned parking lot at the property municipally known as 704 Queen Street East and 3 Hamilton Street. These site-specific by-laws permit outdoor patios that would not have otherwise been permitted by the City's zoning by-laws nor by the Minister's Zoning Order. The by-laws are set to expire on April 14, 2022.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.MM32.37>

At its meeting on June 8, 2021, City Council enacted a site-specific Temporary Use By-law, 519-2021, to ease restrictions as they relate to an outdoor patio ancillary to the concert hall, place of assembly and restaurant located at 345 Carlaw Avenue and 1180 Dundas Street East. The by-law is set to expire on April 14, 2022.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.MM34.34>

PROPOSAL

City Planning has received a request for a temporary outdoor patio on a TPA lot at 592 Gerrard Street East. 592 Gerrard Street East is currently vacant, historically used for municipal parking and managed by the TPA. There are no existing city uses or activities within the proposed patio area, with an existing bike share station along the frontage of the lot to remain.

For main street restaurant businesses, temporary patios are being established in the right of way under the CaféTO program, to provide additional patio capacity during restrictions related to the COVID-19 pandemic. A patio is proposed to be similarly established in this vacant City-owned TPA lot, for restaurants in the vicinity who may reach a licencing arrangement with the City to use the space for a temporary patio.

In response to the request, staff are proposing a temporary use by-law. The property noted above is zoned CR (Commercial Residential) under Zoning By-law 569-2013 and 438-86, which allows both an eating establishment and an outdoor patio. Under both Zoning By-laws, 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 (R Zone). The proposed outdoor patio for 592 Gerrard Street East is setback approximately 15 metres from the nearest R Zone 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) to allow the eating establishment to convert the nearby TPA lot into a temporary outdoor patio. The temporary use by-law would be subject to restrictions prohibiting entertainment uses such as performances, music and dancing. The proposed by-law specifies an expiration date (April 14, 2022) which coincides with the proposed conclusion of the CaféTO program. 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 accessory 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 Bylaw 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 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 TUBL 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.

COMMENTS

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 and entertainment 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.

Eating establishments and outdoor patios are permitted in the CR zone under the city-wide harmonized Zoning By-law 569-2013 and the former City of Toronto By-law 438-86. However, many eating establishments are currently unable to meet their standard patron capacity targets due to social distancing requirements of the COVID-19 pandemic.

When Council extended existing patio city-wide and site-specific TUBLs in March of 2021, it included a provision to consider further site-specific TUBLs subject to a series of circumstances, including that a patio under the CaféTO program is not possible.

The proposed temporary use by-law complements the CaféTO program by providing an opportunity for neighbourhood restaurants to create a temporary patio extension, shifting their capacity from indoor space to an outdoor patio as they adjust to physical distancing requirements related to the COVID-19 pandemic. Staff are of the opinion that adding temporary site-specific relief for a patio on this vacant TPA lot is supportable: the existing lot is underutilized, and the proposed patio is not anticipated to cause undue impacts on the surrounding neighbourhoods.

The proposed TUBL conforms to the Official Plan by supporting an important economic sector on a temporary basis consistent with the requirements of the CaféTO program. The outdoor 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, performances and dancing, to mitigate potential noise issues.

Conclusion

The proposed by-law complements the existing CaféTO program by providing an opportunity for an outdoor patio. The by-law aligns with the CaféTO expiration date of April 14, 2022. This temporary use by-law will provide an opportunity for restaurants in the vicinity to create or expand patio operations.

City Planning staff are recommending the attached site-specific TUBL to allow for an outdoor patio at the property municipally known as 592 Gerrard Street East.

CONTACT

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SIGNATURE

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

Patrick Matozzo
Executive Director, Corporate Real Estate Management

Attachment 1: Draft Temporary Use By-law (592 Gerrard Street East)

Attachment 1

Authority: MM , by Councillor , seconded by Councillor , as adopted by City of Toronto Council on July 14, and 15, 2021

CITY OF TORONTO

Bill

BY-LAW -2021

To temporarily modify zoning restrictions affecting outdoor patios with respect to the lands municipally known in the year 2021 as 592 Gerrard Street East.

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

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; and

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;

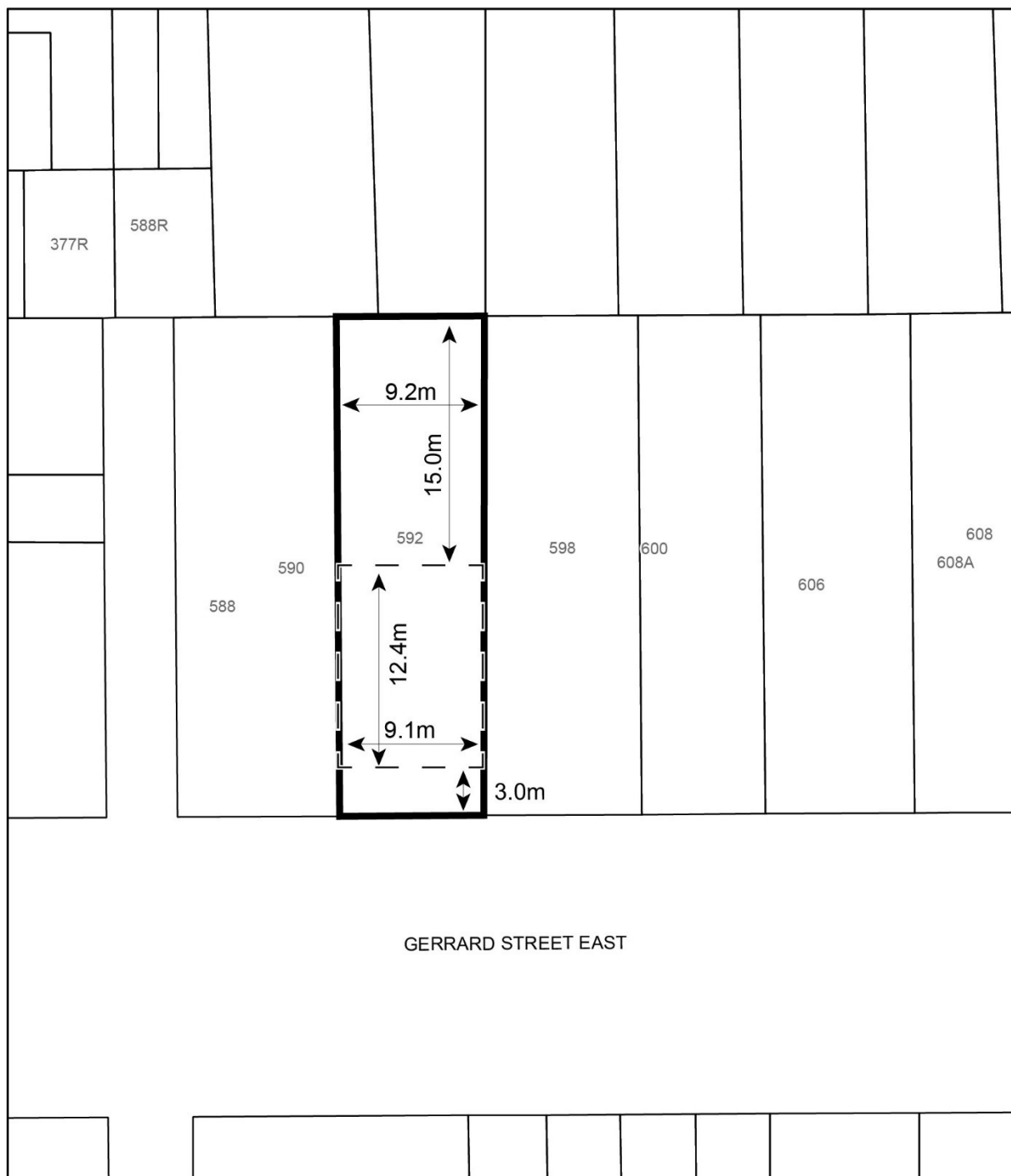
The Council of the City of Toronto enacts:

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 April 14, 2022;
3. The words highlighted in bold type in this By-law have the meaning provided in Zoning By-law 569-2013, Chapter 800 Definitions;
4. The words highlighted in italic type in this By-law have the meaning provided in Zoning By-law 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 associated with a non-residential use located on a lot within the CR zone adjacent to the R zone to the north. The lot fronts onto Gerrard Street East to the south;
 - (b) is not used to provide entertainment such as performances, music and dancing, including prohibition on amplified sound;
 - (c) does not contain food preparation facilities and is not used for outdoor cooking;
 - (d) is located a minimum of 15.0 metres from the rear lot line and 3.0 metres from the front lot line as outlined by hatched black lines on Diagram 1 attached to this By-law; and
 - (e) may have ancillary structures such as tents for the exclusive use of weather protection;
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 associated with a non-residential use located on a lot within the CR zone adjacent to the R zone to the north. The lot fronts onto Gerrard Street East to the south;
- (b) is not used to provide entertainment such as performances, music and dancing, including prohibition on amplified sound;
- (c) does not contain food preparation facilities and is not used for outdoor cooking;
- (d) is located a minimum of 15.0 metres from the rear lot line and 3.0 metres from the front lot line as outlined by hatched black lines attached to this By-law; and
- (e) may have accessory structures such as tents for the exclusive use of weather protection.

Enacted and passed on July , 2021
Frances Nunziata, John D. Elvidge,
Speaker City Clerk

(Seal of the City)



Toronto
Diagram 1

592 Gerrard Street East

File # 21 176823 STE 14 OZ

Location of Application

City of Toronto By-law 569-2013
Not to Scale
06/28/2021