



## The Corporation of the Town of Tecumseh

Planning & Building Services

**To:** Mayor and Members of Council

**From:** Brian Hillman, Director Planning & Building Services

**Date to Council:** March 10, 2020

**Report Number:** PBS-2020-10

**Subject:** Encroachment Agreement  
Villa Pia Investments Ltd.  
12000 Tecumseh Road  
OUR FILE: D11 VILLA

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### Recommendations

It is recommended:

**That** a by-law authorizing the execution of the “Villa Pia Investments Ltd.” encroachment agreement, satisfactory in form to the Town’s Solicitor, which allows for the establishment of two outdoor patios associated with a proposed new 361.5 square metre (3,891.7 square foot) commercial building to be constructed on a 0.85 hectare (2.1 acre) parcel of land located on the north side of Tecumseh Road/Shawnee Road intersection (12000 Tecumseh Road), **be adopted**, subject to the Owner executing the encroachment agreement.

**And that** the execution of such further documents as are called for by the encroachment agreement approved above including, but not limited to, the execution of the acknowledgement/direction required to register the encroachment agreement on title to the lands and such other acknowledgements/directions for any related transfers or real property registrations contemplated by the encroachment agreement, by the Mayor and Clerk, **be authorized**.

### Background

#### Property Location

The subject 0.85 hectare (2.1 acre) commercial property is located on the north side of the Tecumseh Road/Shawnee Road intersection (12000 Tecumseh Road) (see Attachment 1).

Over the past few years, Town Administration has met with the Owner regarding the long-term use and design of the property, currently occupied by the Frank Brewing restaurant/brewery and an auto sales and service establishment. The construction of the Frank Brewing restaurant/brewery was approved by Council by way of a site plan control agreement in 2015. It is the ultimate intent of the Owner to replace the auto-related uses on the property with new commercial/residential uses through the phased redevelopment of the entire property.

## **Need for Encroachment Agreement**

The Owner has filed an application for site plan control amendment in order to facilitate the construction of a new 361.5 square metre (3,891.7 square foot) commercial building (to be divided into two units) on the subject property. The building will be constructed on the vacant grassed area to the southwest of the existing Frank Brewing restaurant/brewery, on the north side of Tecumseh Road. In addition, two outdoor patios, one for each commercial unit, are proposed.

## **Comments**

### **Proposed Patio Design**

Due to the layout of the buildings, parking and access lanes currently on the property and the location of the proposed building, the Owner is proposing to locate the patios along the southern (front) façade of the building, fronting Tecumseh Road and along the eastern side façade of the building, facing the existing patio associated with existing Frank Brewing restaurant/brewery (see Attachment 2). Through the site plan control process, the Owner will be required to convey a 3.0-metre (10-foot) strip of land along Tecumseh Road for road widening purposes. As a result of this road widening, the majority of the patio proposed for the south façade will be located within the Tecumseh Road right-of-way ("ROW"). Only the southern 3 metre (10 foot) portion of the patio along the eastern façade is proposed to encroach into the widened ROW. In order to facilitate the installation of the patios, an encroachment agreement with the Town is required.

A site plan has been prepared depicting the location/design of the patios and the associated fencing and landscaped planters (see Attachments 3A and 3B). This site plan provided details necessary to fully evaluate the proposal and ensure proper integration within the Town's ROW.

The site plan depicts:

- a 12.6 metre long (41.3 foot) concrete patio having an area of 46.5 square metres (500 square feet) that will be located along the southern (front) façade of the proposed new commercial building, abutting the north side of Tecumseh Road. The entire length of the patio will extend approximately 3 metres (10 feet) from the front façade of the building into the Tecumseh Road ROW;

- a 12.8 metre (41.9 foot) by 3.9 metre (12.8 foot) concrete patio having an area of 44.2 square metres (475 square feet) that will be located along the eastern side façade of the proposed new commercial building. This patio will front the existing landscaped open space to the east and will be in close proximity to the patio associated with the Frank Brewing restaurant/brewery. As noted above, only the southern 3 metres (10 feet) of this patio will be located within the Tecumseh Road ROW;
- decorative fencing and concrete landscaped planters that will be used to delineate the perimeter of both patios. It should be noted that the decorative fencing will be seasonal, and will be removed during the winter months;
- an approximate 1.3 metre (4.5 foot) wide hard-surfaced area between the proposed limits of the patios and the existing sidewalk located on Tecumseh Road. When combined with the sidewalk width, the total area for pedestrian passage will be 2.2 metres (7.2 feet). Administration believes this width is adequate for the safe and comfortable passage of pedestrians along the north side of Tecumseh Road;
- gateway access to the patios from both within the new commercial building and directly from Tecumseh Road. A new sidewalk is also to be constructed along the east side of the easterly patio connecting the sidewalk on Tecumseh Road to the existing sidewalk serving the Frank Brewing restaurant/brewery; and
- a bike rack to the east of the eastern patio is also being proposed in order to better accommodate cyclists to the site. The bike rack will not be located within the Tecumseh Road ROW.

## **Official Plan and Zoning**

The subject property is designated General Commercial in the Tecumseh Official Plan. Under subsection 2.13, Commercial Objectives, promoting and strengthening the development of the existing commercial core of the Town is encouraged. The Plan also establishes, under subsection 3.5 a) vii), that in order that the central business area may continue to attract trade from the market area it serves, a high quality of development and an attractive appearance should be created within the area. Administration believes that the proposed outdoor patio will add vibrancy to this area of the Tecumseh Road.

The subject property is zoned “General Commercial (C3)” and “General Commercial (C3-4)” in the Tecumseh Zoning By-law 1746. The C3 and C3-4 Zones permits a range of commercial uses including restaurants and taverns.

## **Community Improvement Plan (CIP)**

The subject property is located within the Tecumseh Road Main Street Community Improvement Plan (CIP) area. The CIP document identifies the importance of the redevelopment of the commercial establishments and properties within this study area and to the rejuvenation of the entire CIP area. The CIP policies supporting this development include:

“Provide an enhanced public realm with a diversity of new attractive open spaces and a new streetscape that is welcoming to pedestrians and expands mobility options such as cycling”;

“Create a vibrant and animated mixed-use main street with a predominance of commercial uses”; and

“Permitting outside dining along sidewalks enlivens a shopping district and helps increase retail sales.”

Based on the foregoing policies of the CIP, the proposed building and associated patios will assist in the revitalization of the CIP area by offering a new enhanced public gathering point that will assist in adding vibrancy to this area and strengthening the local commercial businesses.

Having regard to the building’s location and design, including the associated patios, along with the development’s adherence to the goals and objectives of the CIP, Administration supports the request for an encroachment agreement and believes it to be a positive contribution to this commercial district.

## **Encroachment Agreement**

Wolf Hooker Law Firm (Town Solicitor) has drafted the attached encroachment agreement (see Attachment 4, with the patio site plan drawing attached thereto as Schedule B) which facilitates the aforementioned outdoor patios. The agreement establishes various requirements including, but not limited to, the following:

- i) the encroachment will be for the purpose of patio areas only;
- ii) the Owner will be required to obtain a \$5 million liability insurance policy and all necessary approvals from the Windsor-Essex County Health Unit and, if licensed, from the LCBO;
- iii) the Owner will be required to pay for all costs associated with the preparation and registration of the agreement;
- iv) the agreement will establish that in the event that the Town requires access to the Town ROW for any maintenance or repair to municipal infrastructure, the Owner would be responsible for the removal and reconstruction of the patio areas at no cost to the Town; and
- v) the agreement will establish that the Town may exercise the right to terminate the encroachment agreement if deemed necessary.

## Summary

Town Administration has reviewed the proposed patio proposal and believes they are of an appropriate design and can be properly integrated within the existing commercial development in this area of Tecumseh Road. The proposed patios are in keeping with the policies of the Tecumseh Official Plan and the Tecumseh Road Main Street CIP and would contribute to the revitalization of this portion of Tecumseh Road. Accordingly, Town Administration recommends that Council authorize the execution of the encroachment agreement, as prepared by the Town Solicitor, including Schedule "B – Patio Site Plan" attached thereto.

## Consultations

Public Works & Environmental Services  
Town Solicitor

## Financial Implications

None

## Link to Strategic Priorities

Applicable	2019-22 Strategic Priorities
<input checked="" type="checkbox"/>	Make the Town of Tecumseh an even better place to live, work and invest through a shared vision for our residents and newcomers.
<input checked="" type="checkbox"/>	Ensure that Tecumseh's current and future growth is built upon the principles of sustainability and strategic decision-making.
<input type="checkbox"/>	Integrate the principles of health and wellness into all of Tecumseh's plans and priorities.
<input type="checkbox"/>	Steward the Town's "continuous improvement" approach to municipal service delivery to residents and businesses.
<input type="checkbox"/>	Demonstrate the Town's leadership role in the community by promoting good governance and community engagement, by bringing together organizations serving the Town and the region to pursue common goals.

## Communications

Not applicable ☒

Website ☐

Social Media ☐

News Release ☐

Local Newspaper ☐

This report has been reviewed by Senior Administration as indicated below and recommended for submission by the Chief Administrative Officer.

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Recommended by:

Margaret Misek-Evans, MCIP, RPP  
Chief Administrative Officer

<b>Attachment Number</b>	<b>Attachment Name</b>
1	Subject Property Map
2	Proposed Patio Renderings
3A	Proposed Patio Site Plan
3B	Proposed Patio Site Plan, Detail View
4	Encroachment Agreement