



The Corporation of the Town of Tecumseh

Development Services

To: Mayor and Members of Council

From: Brian Hillman, Director Development Services

Date to Council: April 23, 2024

Report Number: DS-2024-10

Subject: Encroachment Agreement Amendment
Outdoor Patio Redesign
1125 Lesperance Road (Brotto Investments Inc.)
OUR FILE: 1125 Lesperance Property File

Recommendations

It is recommended:

That a by-law authorizing the execution of the “Brotto Investments Inc.” encroachment agreement amendment, as drafted by Wolf Hooker Law Firm, Town Solicitor, which facilitates the establishment of potentially three outdoor patios associated with the commercial uses located at 1125 Lesperance Road, **be adopted**, subject to the Owner executing the encroachment agreement amendment prior to the Town’s execution;

And that the Mayor and Clerk **be authorized** to execute the encroachment agreement amendment, as attached hereto and/or in such modified version as may be approved by the Town’s solicitor prior to execution and such further documents as are called for by the encroachment agreement amendment approved above including, but not limited to, the execution of the acknowledgement/direction required to register the encroachment agreement amendment on title to the lands and such other acknowledgement/directions for any related transfers or real property registrations contemplated by the encroachment agreement amendment.

Background

Subject Property

Brotto Investments Inc. (“the Owner”) owns a commercial property located at 1125 Lesperance Road (see Attachment 1). The commercial building located on the property contains four units, comprising a restaurant, a yoga studio, an office, and a future second restaurant (currently under renovations). The property also provides for on-site parking that has access via Lesperance Road and First Street.

Previous Approvals

In July of 2017, by way of [Report 23/17](#), Council approved an encroachment agreement with the Owner that facilitated the establishment of an outdoor patio associated with the aforementioned existing restaurant. The encroachment agreement permitted the patio to be located along the eastern wall of the commercial building within the Lesperance Road right-of-way (ROW), abutting the restaurant’s entrance.

Also in July of 2017, Council, by way of [Report 22/17](#), approved a Tecumseh Road Main Street Community Improvement (CIP) Grant funding application under the “Sidewalk Café Grant Program” in the amount of \$2,000 in order to assist in the costs of establishing the outdoor patio, as the subject property falls within the CIP area.

Current Proposal

In early 2024, the Owner approached the Town with a request to amend the existing encroachment agreement in order to update the approved site plan drawing/patio layout which depicts the location/dimensions of the outdoor patio. In anticipation of the upcoming establishment of a second restaurant at the property, the Owner prepared an updated site plan that identifies up to three potential outdoor patio’s that could be established (see Attachment 2). The Owner has advised that the existing restaurant will utilize the two northerly patios and the future restaurant will occupy the southerly patio. The tenants of each patio will be seeking a liquor licence for these areas as both food and alcohol will be served.

The details of the proposed patios, as depicted in Attachment 2, are as follows:

- three patios will be constructed within the Lesperance Road ROW and will be integrated within the existing streetscaping/landscaping/pavement improvements that were recently completed along Lesperance Road;

- approximately 10 feet of sidewalk will remain between the outdoor patios and the edge of the curb along Lesperance Road, which is deemed more than adequate for the safe and comfortable passage of pedestrians;
- the northerly and central patio will have areas of 271 square feet and 211 square feet, respectively. Each patio will have seating for 16 people;
- the southerly patio will have an area of 435 square feet with seating for 26 people; and
- the perimeter of the patios will be demarcated by a combination of decorative railings and landscaped planters. **It should be noted that the agreement will prohibit any railings/planters to be bolted/affixed to the cement.**

Comments

Official Plan and Zoning

The subject property is designated “Main Street Mixed Use” in the Tecumseh Official Plan. Goals of this designation includes the provision of commercial uses in a setting that is street-oriented, pedestrian-oriented and designed to promote a compact and walkable main street commercial area that makes it attractive to investment. Administration believes that the proposed amendment to the encroachment agreement will facilitate greater vibrancy to this area of Lesperance Road.

The subject property is zoned “General Commercial Zone (C3)” in Zoning By-law 1746. The C3 Zone permits a wide range of commercial uses including the existing and proposed uses on-site.

Tecumseh Road Main Street Community Improvement Plan (CIP)

As noted above, the subject property is within the CIP area. The CIP document identifies the importance of the redevelopment and improvement of the commercial establishments within this area and to the rejuvenation of the entire CIP area. The CIP supports initiatives that:

- 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; and
- create a vibrant and animated mixed-use main street with a predominance of commercial uses.

Based on the foregoing policies of the CIP, the proposed amendment to the encroachment agreement would meet the intent of the CIP.

It should also be noted that a Financial Incentive Program Grant Application for the tenant who will occupy the southerly patio has been filed under the Sidewalk Café Grant Program in the amount of \$2,000 and is being brought forward for Council approval by way of a separate report, DS-2024-11. Similar to the past grant awarded to this property, these grant funds will be used to assist in the costs associated with the establishment of the patio.

Encroachment Agreement Amendment

Wolf Hooker Law Firm (Town Solicitor) has prepared the attached encroachment agreement amendment (see Attachment 3) that facilitates the removal/replacement of the existing site plan (which only depicts one patio) with the updated site plan as summarized above. The amending agreement also continues to include/carry-forward requirements from the current agreement with respect to liability insurance, approvals from the Windsor-Essex County Health Unit, the requirement that all costs associated from this amending agreement be the responsibility of the Owner and that any/all patios must be removed in the event that the Town requires access to the ROW for any maintenance or repair to municipal infrastructure.

Summary

Town Administration has reviewed the proposed new site plan drawing depicting the patio encroachments and has no concerns. Administration believes that the design/layout is appropriate, in keeping with the policies of the CIP and is properly integrated with the recent streetscape improvements that have been completed along this area of Lesperance Road. Accordingly, Town Administration recommends that Council authorize the execution of the encroachment agreement amendment, as attached hereto as Attachment 3.

Consultations

Public Works & Engineering Services
Town Solicitor

Financial Implications

None.

Link to Strategic Priorities

Applicable	2023-2026 Strategic Priorities
<input checked="" type="checkbox"/>	Sustainable Growth: Achieve prosperity and a livable community through sustainable growth.
<input checked="" type="checkbox"/>	Community Health and Inclusion: Integrate community health and inclusion into our places and spaces and everything we do.
<input checked="" type="checkbox"/>	Service Experience: Enhance the experience of Team Tecumseh and our citizens through responsive and respectful service.

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.

Prepared by:

Enrico DeCecco, BA (Hons), MCIP, RPP
Senior Planner

Reviewed by:

Chad Jeffery, MA, MCIP, RPP
Manager Planning Services & Local Economic Development

Reviewed by:

Phil Bartnik, P.Eng.
Director Public Works & Engineering Services

Reviewed by:

Brian Hillman, MA, MCIP, RPP
Director Development Services

Recommended by:

Margaret Misek-Evans, MCIP, RPP
Chief Administrative Officer

Attachment Number	Attachment Name
1.	Property Location Map
2.	Proposed Patio Layout Site Plan
3.	Encroachment Agreement Amendment