

TO: CITY MANAGER

FROM: DIRECTOR PLANNING AND BUILDING

SUBJECT: ANDUCCI'S RESTAURANT
OUTDOOR SEATING/MUSIC
9600 Cameron Street

2001 AUGUST 20

PURPOSE: To respond to a letter of complaint with respect to outdoor seating and music at Anducci's Restaurant at 9600 Cameron Street.

RECOMMENDATION:

1. **THAT** a copy of this report be sent to Wendy Hankin, 1705 - 9595 Erickson Drive, Burnaby, B.C. V3J 7N9.

REPORT

1.0 BACKGROUND INFORMATION:

On June 7th, 1993 an application for Preliminary Plan Approval(PPA) for seasonal outdoor seating at the above referenced premises was made by the owner Mr. Andy Mollica (see **attached** Sketch). The application was considered under the existing Comprehensive Development (CD) zoning and approved July 26th 1993 as a permissible use under the prevailing C3 uses. This original approval was not picked up and validated by the owner. However, the patio was installed and within a short period of time it was enclosed without benefit of a building permit.

Although the seasonal patio seating was approved as a non-invasive public or commercial use in a 'landscaped' setting, a permanent structure in the side yard which was intended to separate the commercial and residential uses both visually and practically was not approvable under the CD Zoning. A permanent structure which would bring the commercial use to a nil side yard would be in conflict with the original CD zoning.

The Building Division (Bylaw Enforcement Section) worked together with the owner to eventually remove the structure. This was completed and signed off by the City on 1996 April 3. In the interim, the original PPA was re-circulated to the various City Departments in order to reissue the approval for the seasonal outdoor seating. The Health Department noted that they had received two complaints of the outdoor patio area which had been in operation since 1993. In view of the complaints received, the recommendation of approval was based upon two conditions. The first was that there be no music or entertainment on the outdoor patio and that the patio area should be closed at 10:00 pm. PPA#10868 was reissued on 1996 February 8th on that basis. The two conditions were clearly indicated on the plans which had been submitted.

2.0 NOISE COMPLAINTS

Between 1993 and the present, staff, in particular those dealing with the Noise Abatement Bylaw, have received numerous calls and documented complaints from the author of the letter. The majority of these complaints have not been related to the subject site and have ranged from concern of the garbage compactor for both the Anducci's and Red Robin Restaurants (the garbage area is located on the opposite side of the complex and this complaint is the subject of a Council Report dated 1995 January 11), snow removal equipment, WalMart construction noise, Safeway garbage bin noise and several noise complaints with respect to the subject patio itself. On one occasion staff did attend to a call with respect to interior construction noise and the owner of Anducci's was successfully prosecuted with a \$500.00 fine for violation of the noise bylaw in work proceeding outside permissible construction hours. Staff as well as RCMP have attended the site in response to complaints received and it was determined that the decibel levels measured for the patio area were not in excess of those permitted. However, documentation does note that the two conditions of the PPA were at times in violation of what was approved under PPA and continues to be in non-compliance as Ms. Hankin notes in her letter. Staff have attempted to resolve these issues and on more than one occasion have discussed with the owner and/or the evening manager the requirement to clear the patio area after 10:00 p.m. and to remove the outside speakers. As noted in Ms. Hankin's letter, this has not resulted in consistent compliance.

3.0 STEPS TO COMPLIANCE

In the past year another structure has been built in the required side yard of 9600 Cameron Street. This large framed structure was once again built without benefit of a building permit. The Building Division (Bylaw Enforcement Section) is currently working towards compliance, with the owner having already removed portions of the offending structure. Several meetings with the Planning and Building Department have occurred in the past months whereby it was discussed and agreed that a retractable awning or a canopy which does not require structural support on the ground could be approved and still remain within the overall context of the outdoor seating which was considered approvable by its non-permanent nature. During these meetings it was reiterated to the owner, Mr. Mollica, that should a new awning be proposed a separate PPA application and approval would need to be made and that the two conditions originally placed on the PPA with respect to the patio closure at 10:00 pm and no music outdoors would be repeated on the new approval.

Staff have been in touch with the owner, Mr. Mollica, during the week of August 20th with respect to the recent complaint. It was outlined again that the two conditions of the PPA were still in effect. Mr. Mollica was questioned as to the reason for non-compliance. It was acknowledged that the speakers had remained on the outside patio and were on the support posts for the illegal construction. As the offending structure was being removed to meet the Bylaw Enforcement Division's requirements, assurances were given that the speakers were being removed as well and that no music would be played. It was also noted by Mr. Mollica that the staff of Anducci's were aware that the

patio area was to be closed at 10:00 pm and that all attempts were made to ensure that patrons left the area at that time and that no seating was given outside after that time. He noted the difficulty in always ensuring that patrons left the outdoor area promptly but reminded staff that the restaurant itself closed at 10:00 pm on weekdays and only stayed open until 11:00 p.m. on weekends. He indicated he would ensure that staff were diligent in clearing the area at 10:00 pm. Staff suggested that installation of a sign noting closure of the patio area would be appropriate.

In addition, Licence staff will acknowledge the two conditions stated in the original PPA on the actual operating Licence. The conditions of use for the operation of the outside patio area will clearly state that in order to be licenced to operate in that space the Licence will be based on

- 1) no music or entertainment in the outside patio area, and
- 2) the patio must be closed at 10:00 pm. Any failure to comply may result in a suspension of the Licence to operate an outdoor seating area.

4.0 SUMMARY

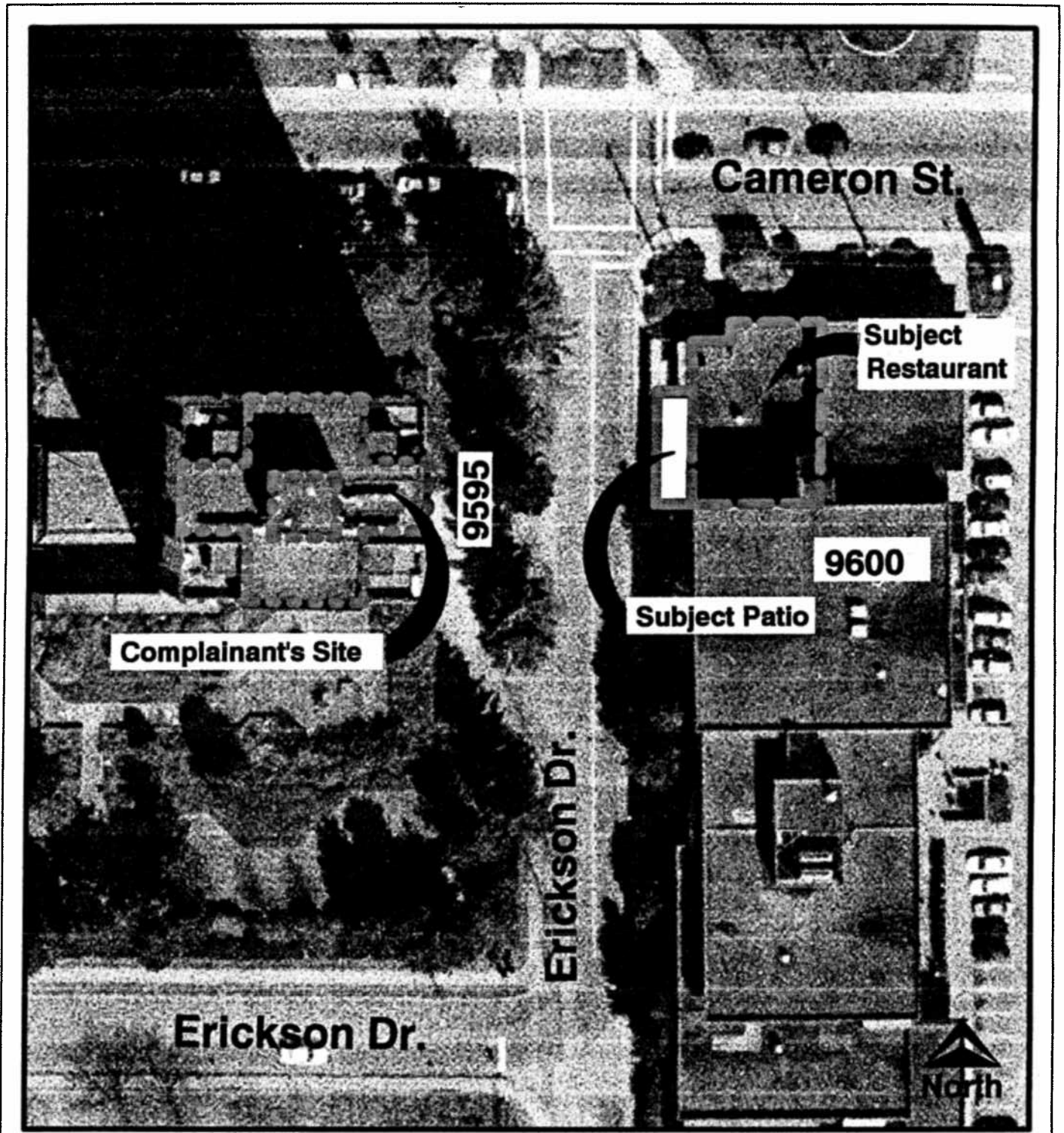
It is acknowledged that when commercial uses are adjacent residential uses they need to be planned in such a way as to pose a minimal conflict. The seasonal outdoor seating area with the two conditions were considered to be appropriate under the existing CD (C3) zoning. The author's letter clearly indicates a desire to remove the patio altogether but as the use is a permissible use under the prevailing zoning, it is suggested that a more effective means of enforcement be pursued to achieve both the original intent of the PPA and the writer's concerns. The Licence Division of the Finance Department will re-issue the Licence with the conditions noted in this report and enforcement will be followed through. And lastly, staff have discussed the conditions of the Licence approval and original PPA approval with the owner/operator of Anducci's, Mr. Mollica. He offers a more diligent compliance with the conditions of use as stated in this report.



J.S. Belhouse
Director Planning and Building

PJA:gk
Attach

cc: Director Engineering
Chief Building Inspector
Director Finance
City Clerk



Planning And Building Department

Scale: N.T.S.

Drawn By: J.P.C.

Date: August 2001

Outdoor Seating Area

Anducci's Restaurant (9600 Cameron St.)

Sketch # 1