

Presentation to

Commission sur le développement économique et urbain et l'habitation
Consultation publique sur la problématique des locaux commerciaux vacants

Sam Boskey

January 15, 2020

1) Let me introduce myself:

For thirty years I was very active in municipal affairs. I was a community organizer in the areas of tenants' rights and community health and was active in many community organisations.

I was elected City Councillor four times in Notre-Dame-de-Grâce during the administrations of Mayors Drapeau, Doré and Bourque. Evidently I was very involved in local planning and zoning issues and in accompanying local businessmen in their various municipal concerns.

In the days before statutory public consultations on proposed zoning changes were institutionalized, I convened many public meetings on my own initiative in my district to discuss zoning and planning changes with my neighbours.

During the elaboration and adoption of the first City-wide Urban Plan and the accompanying zoning by-laws (1986-94), I was a vocal supporter (and sometimes critic) of various aspects of the exercise. And during the 1994-98 term, the first during which the new Urban Plan was in effect, I was an active and diligent member of the Commission de développement urbain (CDU), the commission of City Council which examined zoning changes and derogations in all parts of the City.

Since my days on City Council, I have been an invited guest speaker in courses in several CEGEPs and in 1st and 2nd-cycle programs at universities in Montreal as well as in a public presentation organized by the Institut d'Urbanisme at Université de Montréal. As well, I have been an invited panelist on urban issues at activities organized by various organisations, including Projet Montréal.

I have kept a respectful distance from most of the day-to-day municipal dossiers, not wanting to become, as Jacques Parizeau was labelled, a political grandmother, always commenting from the wings. As such, I have intervened in zoning changes in my borough on only two occasions in the last twenty years, both cases which concerned the threats to residential quality of life which might flow from commercial zoning changes.

If I am here today, it is because of a disturbing experience in the most recent of these cases, last year, in

a dossier provoked by a concern over vacant commercial space. I was surprised and disappointed by the apparent lack of context taken into consideration by the City Councillors and their apparent obliviousness to the consequences of the change in the zoning rules.

(I have included, as an annex to this memoire, several documents associated with that file: extracts of the *memoire décisionnelle*, a note I distributed on social media, and the summary of my presentation to the consultation, as described by the borough's secretary. I invite you to read them since time in today's presentation is limited.)

I feel that it is important to re-state, before this Commission, some of the basic principles which I consider to be essential when making responsible decisions in the area of commercial vacancies.

While commercial vacancies, as you are aware, and as you have been hearing during this consultation, are the result of many complex and interwoven sociological, economic and political issues, I will concentrate my comments on one aspect – that of zoning and urban planning, and within that, in one area: **commercial zoning in residential districts**. I am suggesting that residential neighbourhoods should generate particular concerns involving commercial vacancies not necessarily found in other neighbourhoods.

2) Supply and demand of commercial space

Does a significant commercial vacancy rate indicate an oversupply of space?

That is one hypothetical answer that an introductory course on capitalist economics might suggest; according to the texts, we would have to pretend that the market for commercial space in Montreal is fluid and barrier-free and that landlords and commercial tenants can freely bargain. (That economics textbook should be on the shelf beside fairy tales, since in the real world, such idealized markets rarely exist.)

However, it is indeed important to consider, as was suggested by the consultation document for these hearings, the amount of commercial space available or potentially available under the current zoning rules. If one concludes that there is “too much” space available, that may indeed be one factor in the vacancy rate.

In 1986, just before the end of the Drapeau era, a major study of commercial zoning was undertaken by senior urbanist Georges Bonhomme, examining every street in the City. M. Bonhomme's conclusion was that Montreal, with a (pre-fusion) population of just over a million, had enough commercially-zoned space to satisfy the needs of a city of 7 million!

As a result, City Council removed commercial designations from the zoning on parts of 99 different streets, with the aim of consolidating the health of commercial arteries.

I invite the Commission to examine M. Bonhomme's report, with a view to determining – with the benefit of up-to-date information, whether a similar approach would be appropriate today. M. Bonhomme is still active; some members of the Commission might sit down with him to hear his description of that dossier and to hear his suggestions for dealing with the present-day challenges.

3) The tightrope of zoning

Urban planning as a concept - and zoning as one of its principal tools - are indicators of civilization and democracy in contemporary urban societies. Urban space is limited and the functions attributed to it for different uses allow for different needs for space to co-exist harmoniously.

Without planning and zoning, urban life would be chaotic, violent and unhealthy. Today, it is widely accepted that heavy industry, which involves noise, polluting fumes and large trucks should not be located in neighbourhoods with small children and pedestrians.

But our attitudes concerning commercial zoning are less clear!

I want to suggest some basic principles for dealing with commercial vacancies in **residential** neighbourhoods.

Residential neighbourhoods, by definition, are primarily for people; it is where they live, play, walk, and interact and socialize with neighbours.

All planning policy (including transport, education and health services, recreation facilities, retail and service establishments, etc.) should have as a priority the protection and the promotion of the quality of life of the residents.

First-line commercial businesses are an important and essential part of a modern urban residential neighbourhood, 'first-line' being services responding to the usual local needs of the local residents. By maintaining a variety of establishments and services right in the neighbourhood, residents are not required to use an automobile or to travel outside their neighbourhood to satisfy their regular, unspecialized needs.

Without a variety of local first-line services, one has to take time and some form of public or private transport to satisfy one's needs; those with limited mobility or limited financial resources or limited time and who cannot access first-line services easily have to choose between spending their precious energy, time and money, or doing without! Neither choice makes living in such a community attractive.

The point I wish to emphasize is this: in a residential neighbourhood, commercial space should be serving the residents of the community. Local businesses can do this well, NOT just because they are businesses, but because they serve community needs.

Businesses in a residential neighbourhood, however, do NOT ALWAYS improve the lives of the neighbouring residents.

Therefore, finding a commercial tenant for a every vacant commercial space in a residential neighbourhood should NOT be an end in itself, nor should it take precedence over the needs of the residential neighbours.

The disturbing dossier to which I referred earlier was discussed at the same time that some other boroughs were limiting the zoning available for restaurants in order to prevent gentrification. But in

this borough, it was proposed that an unlimited number of restaurants be allowed on sections of certain commercial streets, when much evidence pointed to the negative effects that this would have on the nearby residents.

A concentration of restaurants would increase noise (these streets have residents living on the upper floors, and restaurants are one of the few businesses regularly open in the evenings), odours, garbage, vermin and deliveries (restaurants require more frequent deliveries than many other businesses and when the streets do not have commercial lanes behind the stores, traffic will necessarily be interrupted.)

These streets already have nearly 100 functioning restaurants so the opening of additional establishments would either compete in a cannibalistic fashion with each other or bring in new visitors from other parts of the city, mostly in the evening and mostly by private car in a neighbourhood where parking is already difficult and at a time when most of the residents (and their cars) are at home on residential streets.

Given that restaurants tend to displace smaller traditional businesses, not only does the arrival of such new establishments **not** satisfy any unmet-need for local residents, but, on the contrary, by driving out or replacing the local barber, stationery store, used book store, dry cleaner, etc., it detracts from the qualities that convert a simple district into a healthy residential neighbourhood. When one considers that the poorest least mobile residents in this neighbourhood are likely to have their first-line services put in jeopardy for the benefit of visitors looking for a good time, one can wonder on whose behalf the municipal decision-makers are working!

The only arguments put forward in favour of the zoning change (see the dossier in the annex):

- i) because of shopping on the internet, the city doesn't need space for traditional stores, and
- ii) this part of the city needs "animation."

My point here is that an obsession with filling empty storefronts in the simplest way possible is somehow based on an assumption that commercial vacancies are by nature very bad, and that no harm will come to a community by stuffing businesses into its storefronts. (May I also point out that this zoning change was adopted with no publicity apart from the minimum statutory notice and that the consultation was held far from the commercial streets effected by the zoning change.)

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When zoning is used like a blunt instrument, it can do more harm than good. A zoning by-law which classifies a restaurant in the same zoning category as a shoe store, when nearly every aspect of their impact on the neighbouring community is different, should be upgraded and improved.

The rules for the distribution of permission for the physical and social use of urban space must regularly be upgraded to correspond both to the evolution of society (changes in family structure, in job structures and working hours, shopping habits, etc) as well as the evolution of social preoccupations such as pollution, waste and safety, and the need for personal interactions and mobility with neighbourhoods.

If the inconvenience of empty stores is discussed within the context of these issues, the results will be more productive than a mere reflex-action determined to eradicate vacancies by any means necessary.

4) Other considerations

Changes to zoning strategy, that is the application of a clearer, articulated municipal policy on the interaction between commercial and non-commercial property uses – serving both a **regulatory** and **educational** function – is only one aspect of this complicated issue.

Some other aspects which City Council should explore in the future:

a) municipalization of urban land - This proposal was first made in Montreal 50 years ago during the 1970 election by the opposition party the Front d'action Politique (FRAP). Municipal ownership of all (of most of) the land in the city would remove the power of speculators to influence urban planning. The City, in a democratic and participatory manner could design the zoning and land-use for the common good rather than the current situation where urban planning is a constant series of skirmishes with hungry developers who are less concerned with the larger consequences of their actions. (Think: Royalmount!)

b) commercial rent-control – This, in present-day Quebec present, has not been legislated by the provincial government. Such a policy might provide a modicum of security to businesses where landlords are more concerned with short-term profit than with the well-being of their commercial tenants. If the provincial government is not open to a province-wide plan, the City could ask for special powers in its own Charter to implement it here.

c) land trusts – Albeit a piece-by-piece treatment of a larger problem, the City could examine various strategies – possibly using its para-municipal corporations – to remove commercial properties from the speculative market, while allowing individual private businesses to continue to function as members or tenants of these non-profit entities.

d) municipal finances – Much of current municipal financing is based on anti-social tax principles. Residential and commercial property taxes are collected on speculative land-valuations which are based on as-yet-unrealized profits; the tax bills are passed, through rents, to the commercial and residential tenants through their rents, who will never share in the eventual profits when the property is sold. This is simply cruel and exploitative and causes hardship to many businesses.

The City should not have to rely on business taxes for its financing for many reasons, one of which is that it encourages the City to attempt to eliminate all commercial vacancies for its own financial gain, regardless of the social consequences. A tax policy designed to protect small business rather than large corporations should also be examined.

ANNEX

Sommaire décisionnel

Identification Numéro de dossier : 1193558007

Arrondissement Côte-des-Neiges - Notre-Dame-de-Grâce , Direction de l'aménagement

Objet

Adopter un règlement modifiant le Règlement d'urbanisme de l'arrondissement Côte-des-Neiges--Notre-Dame-de-Grâce (01-276) afin d'abroger le contingentement des restaurants sur l'avenue Somerled et la rue Sherbrooke Ouest.

Contexte

L'arrondissement désire revoir les règles de contingentement sur l'avenue Somerled et la rue Sherbrooke ouest afin de dynamiser ces secteurs commerciaux tout en préservant la qualité de vie des résidents.

Contingentement

À la base, le contingentement des restaurants avait comme objectif d'éviter une trop grande concentration de cet usage dans un secteur donné et favoriser une diversification commerciale. Sachant que les habitudes des consommateurs changent et que ceux-ci se tournent de plus en plus vers le commerce électronique pour effectuer leurs achats de biens de consommation (linges, électroniques, etc.), il est de plus en plus difficile d'avoir une offre diversifiée de commerçants. L'arrondissement a donc décidé d'amorcer une réflexion sur les normes qui régissent le contingentement.

Modification

Présentement, la réglementation exige, pour les secteurs commerciaux de faible ou moyenne intensité commerciale (C.2 et C.4), de respecter une distance de 25 entre deux restaurants. Cette norme ne s'applique pas pour les commerces ayant une superficie de plancher inférieure à 50 m² ou supérieure à 1000 m².

Afin d'offrir plus de flexibilité pour la location des locaux commerciaux et assurer une vie de quartier animée, les modifications suivantes sont proposées :

- *limiter la superficie de plancher pour les restaurants à 200 m² [?] dans les secteurs commerciaux de faible et de moyenne intensité (C.2 et C.4) sur la rue Sherbrooke Ouest et l'avenue Somerled ;
- *retirer la norme de contingentement qui exige de respecter une distance de 25 m entre deux restaurants.

La libéralisation de ces normes vise principalement à encourager et attirer les restaurants qui vont participer à l'animation de la rue et à la vie de quartier.

Il est important de noter que les établissements de restauration rapide (qui répondent à la définition énoncée au règlement d'urbanisme) ne sont pas autorisés dans les secteurs C.2 et C.4. Ce type de restaurant est autorisé uniquement dans les secteurs d'usage C.4.1.

Plan d'urbanisme

L'un des objectifs du plan d'urbanisme vise à consolider les secteurs commerciaux. Pour ce faire, l'arrondissement veut instaurer des mesures réglementaires appropriées afin de favoriser la continuité commerciale au rez-de-chaussée des bâtiments.

Impacts à court et moyen termes

Selon nos échanges avec le Service du développement économique de la ville, les impacts à court et moyen

termes ne devraient pas affecter l'équilibre commercial de ces artères et la quiétude des secteurs visés. En effet, les coûts pour transformer et réaliser la mise aux normes d'un local commercial pour accueillir un restaurant sont assez dispendieux. De plus, il n'est pas inhabituel d'assister, dans ce domaine hautement compétitif, à une rotation fréquente des restaurateurs.

Ces deux facteurs permettent d'anticiper que les nouveaux restaurateurs vont chercher à reprendre les locaux laissés vacants et déjà transformés pour ce type de commerce.

Impacts à long terme

Bien que le retrait du contingentement des restaurants vise à y favoriser l'animation et la fréquentation des artères par l'augmentation de ce type de commerces, cette modification réglementaire risque aussi, en contrepartie, d'augmenter les nuisances inhérentes à la cohabitation entre les secteurs commerciaux et d'habitation.

En effet, l'augmentation du nombre de ce type de commerce, peut à long terme, engendrer des impacts reliés principalement au bruit, au stationnement et à la salubrité (déchets).

Justification

Considérant que l'arrondissement veut favoriser le dynamisme commercial sur ces artères ;

Considérant que l'intensité des activités commerciales autorisées permettrait d'offrir une plus grande diversité d'offre pour des restaurants ou des cafés de quartier;

Considérant que les nouvelles mesures permettraient d'attirer des commerces qui contribueraient à l'animation des secteurs et à développer une vie de quartier.

La Direction de l'aménagement urbain et des services aux entreprises recommande la modification proposée.

Message I sent out on social media

The NDG-CDN Borough is proposing a particularly worrisome zoning change in NDG which would allow wall-to-wall restaurants on Sherbrooke from the Westmount border to Montclair, and on the entire commercial area of Somerled.

The public consultation meeting will be held this Wednesday, April 24 at 6:30 p.m. at 5160, boulevard Décarie, 4th floor.

The dossier is on-line at http://applicatif.ville.montreal.qc.ca/som-fr/pdf_avis/pdfav26822.pdf and the explanatory text is at the end, p. 26-28.

The proposed change: For the past generation, any new restaurant opening up on Sherbrooke or Somerled in NDG has had to be at least 25 metres from an existing restaurant, both to prevent too large a concentration of similar establishments and to maintain commercial diversity on those streets. This is known in French as “contingement”. The proposed by-law would simply abolish this 25-metre rule, hypothetically allowing restaurants to occupy the entire commercial space on these two streets.

The dossier from the Borough's Planning Department contains no data or economic, environmental or social analysis of the “problem” that this zoning change is intended to solve, except to mention that on-line shopping is having an effect on the diversity of shops. (Is this different from any other street in the western hemisphere?)

There is no explanation of why more restaurants are the “solution” to the undefined problem, except that they will increase the level of “animation” in the neighbourhood. (There is no definition of animation, nor what level of it is intended by the proposed change.) There are currently over 70 eating establishments on the two streets, before any zoning change.

Without explanation, the report relies on conclusions from the Central City's Economic Development Department indicating that allowing unlimited restaurants will not affect the commercial balance of these streets nor the tranquility of the neighbourhood. In the next paragraph, however, the report says that the proposed change will likely cause – for the indefinite future (!) – an increase in problems related to noise, parking and garbage!

My concerns:

* PHYSICAL AND ENVIRONMENTAL IMPACT:

In a context where the current number of restaurants on the two streets probably already exceeds the needs of the NDG residents, more restaurants mean more cars, especially in the evening when local residents have their cars at home. More restaurants mean more truck deliveries and more garbage pick-ups, due to the perishable nature of the merchandise. A concentration of restaurants inevitably increases the presence of vermin.

As Sherbrooke is also a residential street (the upper floors of most buildings), more restaurants will mean more people living upstairs from evening-time commercial activities in the evenings and the accompanying noise and odours.

As most restaurants are relative empty during the day, there will be less activity (nor more) on the street during the day; with fewer stores remaining, shopping on the street will become less efficient and pleasant, encouraging even more restaurants. A recent change to the provincial liquor law (not yet in force) will allow alcoholic beverages to be served to customers, on certain conditions, in an establishment where a restaurant permit is used, without the customers being absolutely required to consume food there. Imagine the impact on these two streets if the number of restaurants serving alcohol increases.

Once a restaurant has occupied a location, 'acquired rights' allow it to remain open indefinitely, even if the zoning eventually changes.

*** SOCIAL IMPACT:**

A variety of local, easily accessible stores is important for the community, especially for those who are socially vulnerable or disabled. As commercial space is limited, every new restaurant will mean one less store and less (not more) commercial diversity on the street. Fewer stores catering to daily shopping needs means more people will use cars for shopping, or have to travel considerable distances by bus to fulfil basic needs.

Sherbrooke and Somerled are the shopping streets used by the lowest income sectors of the population who will not see any benefit in their stores being displaced by restaurants. Over time, the character of the streets will change and become more focused on leisure than on serving basic community needs. Most jobs created in restaurants are subject to a lower minimum wage than in any other industry in Quebec.

There are more impacts...

Please come to the meeting on Wednesday to hear the Borough's proposal and voice your opinions.

Sam Boskey
NDG City Councillor 1982-98

Minutes of the Assemblée publique de consultation

Arrondissement de Côte-des-Neiges—Notre-Dame-de-Grâce
Projet particulier PP-110 – 1193558008 Page 5
Règlement RCA19 17314 – 1193558007

6. Période de questions et commentaires

M. Sam Boskey souligne son inquiétude quant au processus de modification réglementaire, et à l'impact environnemental et social des modifications proposées. En ce qui a trait au processus de modification réglementaire, il déplore le manque d'information et de recherche sur l'état actuel de la situation, à savoir par exemple, le nombre de restaurants, d'épiceries, etc, actuellement sur ces artères.

Selon lui, la modification proposée nuira à l'équilibre commercial du secteur. Il se questionne sur le concept d'animation avancé par la direction, lequel est le seul impact mentionné au dossier.

M. Boskey indique que la dynamique du quartier Notre-Dame-de-Grâce ne semble pas avoir été étudiée et rappelle qu'il existe de grandes différences entre les deux secteurs visés (Sherbrooke et Somerled). Selon lui, une grande partie des résidents habitant aux abords des secteurs visés (Benny Farm, Walkley, Terrebonne, Sherbooke Forest) n'ont pas les moyens d'aller dans les commerces que l'on souhaite favoriser et que la venue de plus de restaurants contribuerait à la gentrification du secteur.

Il compare la modification à une néo-libéralisation au niveau municipal, une façon de laisser les forces du marché prendre le dessus sur les besoins des résidents, et demande si les citoyens ont manifesté le souhait d'avoir davantage de restaurants dans le secteur.

Le retrait du contingentement va nécessairement faire augmenter le nombre de restaurants, ce qui aura un impact significatif sur la qualité de vie des résidents. L'ajout de ce type de commerce augmentera les nuisances (bruit, poubelles, livraisons, stationnement, etc.). Il questionne également l'impact des livraisons sur la rue Sherbrooke où se trouve une voie réservée. Il s'inquiète des désagréments liés au bruit pour les résidents des étages supérieurs des bâtiments qui accueilleront les nouveaux restaurants. Il fait état de modifications législatives en matière de vente d'alcool, lesquelles permettraient aux restaurants de servir de l'alcool sans vente de nourriture.

M. Boskey croit que les artères commerciales doivent d'abord répondre aux besoins des résidents du secteur de manière à ce que ceux-ci puissent se procurer les biens et services sans recourir à la voiture : le secteur commercial pour la vitalité d'un quartier est aussi important que la présence d'une école. Il rappelle que le contingentement est toujours en vigueur dans plusieurs arrondissements centraux.

Il rappelle que les employés de la restauration sont parmi les moins bien payés, ce qui va à l'encontre du souhait de l'arrondissement d'encourager l'augmentation du salaire minimum à 15 \$/heure.

En conclusion, il croit qu'il serait irresponsable que le conseil d'arrondissement adopte les modifications proposées sans davantage d'informations sur leurs impacts, et souligne qu'une fois adoptées, il n'y aura pas de retour en arrière car les restaurants qui seront ouverts bénéficieront de droits acquis.