

Memorandum to the City of Markham Committee of Adjustment
August 23, 2018

File: A/117/18
Address: 3 Ovida Boulevard, Markham
Applicant: Shertaji Property Management
Agent: QX4 Investments Ltd. - Consulting Services (Ben Quan)
Hearing Date: Wednesday August 29, 2018

The following comments are provided on behalf of the East Team.

The applicant is requesting relief from the following requirements of By-law 1229, as amended, C3, to permit:

- a) **Section 12.15.1 (a):**
a day care centre, whereas the By-law does not permit a day care centre;
 - b) **Section 12.5 (c) (ii) & (iii):**
no landscape open space strip to be required along the south lot line, whereas the By-law requires a landscape open space strip at least 25 ft in width adjoining any side or rear lot line that abuts a Residential Zone;
 - c) **Parking By-law 28-97, Section 3.0:**
required parking spaces to be provided on an adjacent lot, whereas the By-law requires that all required parking spaces be provided on the same lot;
- as it relates to a proposed day care centre in an existing commercial building.

BACKGROUND

Property Description

The subject property is located south of Highway 7 East, on the east side of Ovida Boulevard, which is west of Main Street Markham South. There is a vacant commercial building, a parking area and landscaping on the subject property. Vehicular access is via a paved driveway from Ovida Boulevard.

The subject property is part of a commercial area that extends along the south and north sides along this stretch of Highway 7 East. The property straddles an established residential neighbourhood to the south, and commercial development to the north. There is residential and commercial development to the east and west.

The adjacent lot to the immediate south of the subject property (Part 1 on Registered Plan 65R-19272) has a parking lot with a shared driveway to 3 Ovida Boulevard, but no direct access to Ovida Boulevard. This lot was severed from the property at 7 Ovida Boulevard (the existing residential property to the south) and rezoned by By-law 2005-221 to permit surplus parking associated with the building on 3 Ovida Boulevard, in addition to the uses permitted in the R1 zone.

At the time, all required parking for the medical office was provided on the subject property itself, and only surplus parking was provided on the adjacent lot to the south.

Part 1 on Registered Plan 65R-19272 will be hereafter referred to as "the adjacent lot to the south." 3 Ovida Boulevard and the adjacent lot to the south are two (2) separate parcels of land and have not merged on title. It is important to note that 3 Ovida Boulevard and the adjacent lot to the south are both separate parcels of land that can each be sold separately.

Proposal

The applicant proposes to establish a day care centre within the existing commercial building. The applicant has advised that a playground area is to be provided to the east of the existing building. The applicant is also proposing to install a 1.2 m high black vinyl chain link fence around the outdoor play area. The same fencing is to be continued along the entire east lot line of the subject property and the adjacent lot to the south.

The applicant is proposing that all existing parking be removed from the subject property with the exception of the barrier free parking space that is located directly west of the existing building. The adjacent lot to the south is to be used for all of the required parking spaces for the proposed day care centre, with the exception of the required barrier free parking space. The applicant has provided a parking calculation to indicate that the proposed day care centre requires fifteen parking spaces (including one barrier free parking space).

The applicant is seeking minor variances to permit a day care centre on the subject property, to not require a landscape open space strip along the south lot line which abuts a residential zone, and to permit all of the required parking spaces (with the exception of the barrier free parking space) to be provided on the adjacent lot.

Previous Applications B/29/17, A/153/17 and A/154/17

The previous Owner of 3 Ovida Boulevard and the adjacent property to the south submitted applications for consent and minor variance that were deferred *sine die* at the May 30, 2018 Committee of Adjustment hearing. The purpose of those applications is to facilitate development of a single detached dwelling on the adjacent lot to the south and to increase the landscape strip on 3 Ovida Boulevard. If this current minor variance application is approved, the previous severance and minor variance applications should be withdrawn by the landowner as it is not appropriate to have unrelated applications for the same property still active and maintained by the landowner.

Provincial Policies

Renewed Early Years and Child Care Policy Framework (2017)

The Province of Ontario, in its *Renewed Early Years and Child Care Policy Framework (2017)*, looks to municipal partners to assist in the creation of new

spaces in the community to provide additional options for people to access child care. This framework aims to address the considerable demand for child care spaces that exists throughout Ontario.

Official Plan and Zoning

Official Plan 2014 (partially approved on November 24, 2017 and updated on April 9th, 2018)

The Official Plan 2014 designates the subject property as 'Mixed Use Mid Rise,' which provides for institutional, commercial, office and residential land uses. Section 8.3.1.2 of the Official Plan provides for day care centres within all "Mixed Use" designations, subject to the Specific Use Policies in Section 8.13.2.

The adjacent lot to the south is designated "Residential Low Rise," which provides for low rise housing forms including single detached dwellings.

Zoning By-law

The subject property is zoned "Service Commercial (C3)" in By-law 1229, as amended. Amending By-law 2005-221 limits the permitted uses to Business Offices, Professional Offices and Clinics, with a maximum gross floor area of 325 sq. m (3,498.3 sq ft). The proposed day care centre is not permitted.

Section 12.5 (c) (ii) of By-law 1229 requires a 25 ft (7.62 m) landscape open space strip where any lot line in a C3 zone abuts a residential zone. The proposed lot configuration includes no landscape open space strip on the subject property.

Section 3.0 of Parking By-law 28-97 states that, "No person shall use any land, building or structure in any zone for any purpose permitted by this By-law, unless parking spaces are provided on the same lot in accordance with the provisions of this By-law." The proposed provision of parking on the adjacent lot to the south does not meet the By-law requirement for parking to be provided on the same lot as the use that generates the parking requirement.

The adjacent lot to the south is zoned "One-Family Detached Dwelling (R1)" in By-law 1229, as amended, which permits single detached dwellings and accessory buildings. Amending By-law 2005-221 permits parking that is associated with the building at 3 Ovida Boulevard to be located on the adjacent lot to the south in addition to the uses permitted in the R1 zone.

Applicant's Stated Reasons for Not Complying

The application form indicates, "The By-law is antiquated and does not adequately implement the City's current Official Plan policies which support day care centres under its 'Mixed Use Mid Rise' Designation."

Zoning Preliminary Review Not Undertaken

The applicant has confirmed that a Zoning Preliminary Review (ZPR) has not been conducted. Consequently, it is the applicant's responsibility to ensure that the

application has accurately identified all of the variances to the Zoning By-law required for the proposed development. If the variances in the application contain errors, or if the need for additional variances is identified during the building permit review process, further variance applications may be required to address outstanding matters and there will be a delay in application processing.

COMMENTS

The Planning Act states that four tests must be met in order for a variance to be granted by the Committee of Adjustment:

- a) the variance must be minor in nature;
- b) the variance must be desirable, in the opinion of the Committee of Adjustment, for the appropriate development or use of land, building or structure;
- c) the general intent and purpose of the Zoning By-law must be maintained;
- d) the general intent and purpose of the Official Plan must be maintained.

Day Care Centre Use

The applicant is requesting relief to permit a day care centre, whereas the By-law does not permit a day care centre. By-law 2005-221 limits the permitted uses of the subject property to Business Offices, Professional Offices and Clinics.

Given the provincial policy support for day care centres, when there is an opportunity to add a day care centre in an appropriate location that meets the City's Official Plan policy criteria, it is appropriate to support the proposed use.

The City's 2014 Official Plan has specific use policies which include design and site layout of the proposed day care centre and locational criteria. The subject property's location within the commercial area associated with this stretch of Highway 7 East and is in close proximity (one property south) of an arterial road (Highway 7 East).

Staff recommend that an application to amend the existing site plan agreement be submitted for the proposed day care centre as a condition of approval to evaluate the following:

- 1. traffic generated from the proposed day care centre and mitigation measures;
- 2. accommodating on-site parking, pick-up and drop-off facilities, and outdoor play area;
- 3. ensuring the existing barrier free parking space meets current City standards; and
- 4. amending the existing site plan agreement for the previous use to reflect the proposed new day care centre and site layout.

Landscape Open Space Strip

The applicant is requesting relief to permit no landscape open space strip along the south lot line of 3 Ovida Boulevard (the lot line between 3 Ovida Boulevard and the adjacent lot to the south), whereas the By-law requires a landscape open space strip at least 25 ft (7.62 m) in width adjoining any side or rear lot line that abuts a Residential Zone. The intent of this By-law requirement is to ensure sufficient buffering between commercial and residential uses.

Although it is zoned R1, the adjacent lot to the south was used for surplus parking associated with the building on the subject property. If the lot is redeveloped in the future to any other use than what is currently proposed, it is a recommended condition that the day care centre use will no longer be permitted. This condition serves to ensure that residential development on the adjacent lot to the south would not be permitted without an appropriate landscape buffer to the commercial property (3 Ovida Boulevard) to the north.

The adjacent lot to the south has an existing 3 m (9.84 ft) wide landscape strip adjoining its south lot line, an existing 1.5 m (4.92 ft) wide landscape strip adjoining its east lot line, and along the north lot line there is an existing 1.5 m (4.92 ft) wide planter box that extends approximately half of the depth of the property. The existing landscape strips feature hedgerows to screen the parking lot from the surrounding dwellings. Staff are satisfied that the existing landscaping around the parking lot provides adequate buffering for the adjacent residential properties.

Required Parking Spaces to be provided on an Adjacent Lot

The applicant is requesting relief to permit required parking spaces to be provided on an adjacent lot, whereas the By-law requires that all required parking spaces be provided on the same lot. The applicant proposes to provide all of the required parking, with the exception of the barrier free parking space, on the adjacent lot to the south.

Given that a site-specific by-law was previously approved on the adjacent lot to the south to permit parking associated with the previous commercial use (Lynde Clinic on 3 Ovida Boulevard) and has been used as such, Staff are of the opinion that this situation is unique and can facilitate parking for the proposed day care centre. However, the proposed development is different from the previous clinic operation. Previously, only overflow parking (no required parking) was provided on the adjacent lot to the south. In this case, the applicant is requesting that all required parking with the exception of the barrier free parking space be provided on the adjacent lot to the south and not on the lot containing the proposed day care centre. Staff have no objection to the proposed variance to allow required parking for the proposed day care centre to be located on the adjacent lot to the south, provided that both parcels of land (3 Ovida Boulevard and the adjacent lot to the south) formally merge on title, to the satisfaction of the City Solicitor. This is of concern to Staff because if they remain separate, either parcel of land can be sold

separately at any time which would result in no required parking being available for the proposed day care centre.

PUBLIC INPUT SUMMARY

An email was received from a resident enquiring about why a day care centre is not permitted, why is the applicant requesting relief from the requirement for a landscape strip and where will the drop-off for the day care centre be.

Additional information may be received after the writing of this report; the Secretary-Treasurer will provide information on this at the meeting.

CONCLUSION

Staff are of the opinion that the variances satisfy the four tests of the Planning Act and have no objection to their approval. It is recommended that the Committee consider public input in reaching a decision.

The onus is ultimately on the applicant to demonstrate why they should be granted relief from the requirements of the zoning by-law, and how they satisfy the tests of the Planning Act required for the granting of minor variances.

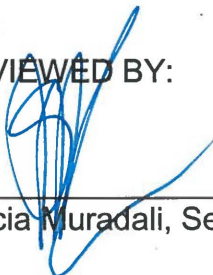
Please see Appendix "A" for conditions to be attached to any approval of this application.

PREPARED BY:



Greg Hayes, Committee of Adjustment Technician, Zoning and Special Projects

REVIEWED BY:



Stacia Muradali, Senior Planner, East District

APPENDIX "A"

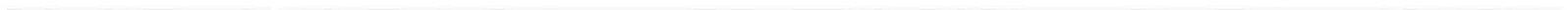
CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/117/18

1. The variances apply only to the proposed development as long as it remains.
2. That the variances apply only to the subject development, in substantial conformity with the plan(s) attached as Appendix "B" to this Staff Report and date-stamped as received August 7, 2018, and that the Secretary-Treasurer receive written confirmation from the Director of Planning and Urban Design or designate that this condition has been fulfilled to his or her satisfaction.
3. That the day care centre be permitted on the subject property if and only if all of the required parking is provided on the subject property and/or the adjacent lot to the south (Part 1 on Registered Plan 65R-19272), in conformity with the plan(s) attached as Appendix "B" to this Staff Report and date-stamped as received August 7, 2018, to the satisfaction of the Director of Planning and Urban Design.
4. That the Owner amends the existing site plan agreement for the proposed day care centre, to the satisfaction of the Director of Planning and Urban Design.
5. That the Owner submit to the satisfaction of the City Solicitor a letter prepared and signed by a lawyer to certify that the adjacent lot to the south (Part 1 on Registered Plan 65R-19272) has been formally merged on title with the property at 3 Ovida Boulevard. If there is a legal reason why both parcels of land cannot be formally merged on title, then a letter prepared and signed by a lawyer must be provided to the satisfaction of the City Solicitor.
6. That the Owner submit to the Secretary-Treasurer a signed letter withdrawing the previous severance and minor variance applications B/29/17, A/153/17 and A/154/17.

CONDITIONS PREPARED BY:



Greg Hayes, Committee of Adjustment Technician, Zoning and Special Projects



METRIC
DISTANCES SHOWN ON THIS PLAN ARE
IN METRES AND CAN BE CONVERTED
TO FEET BY DIVIDING BY 0.3048.

ASSOCIATION OF ONTARIO
LAND SURVEYORS
2043829



BENCHMARK NOTE
ELEVATIONS ARE GEODETIC
OBTAINED BY R.T.K. MEASUREMENTS

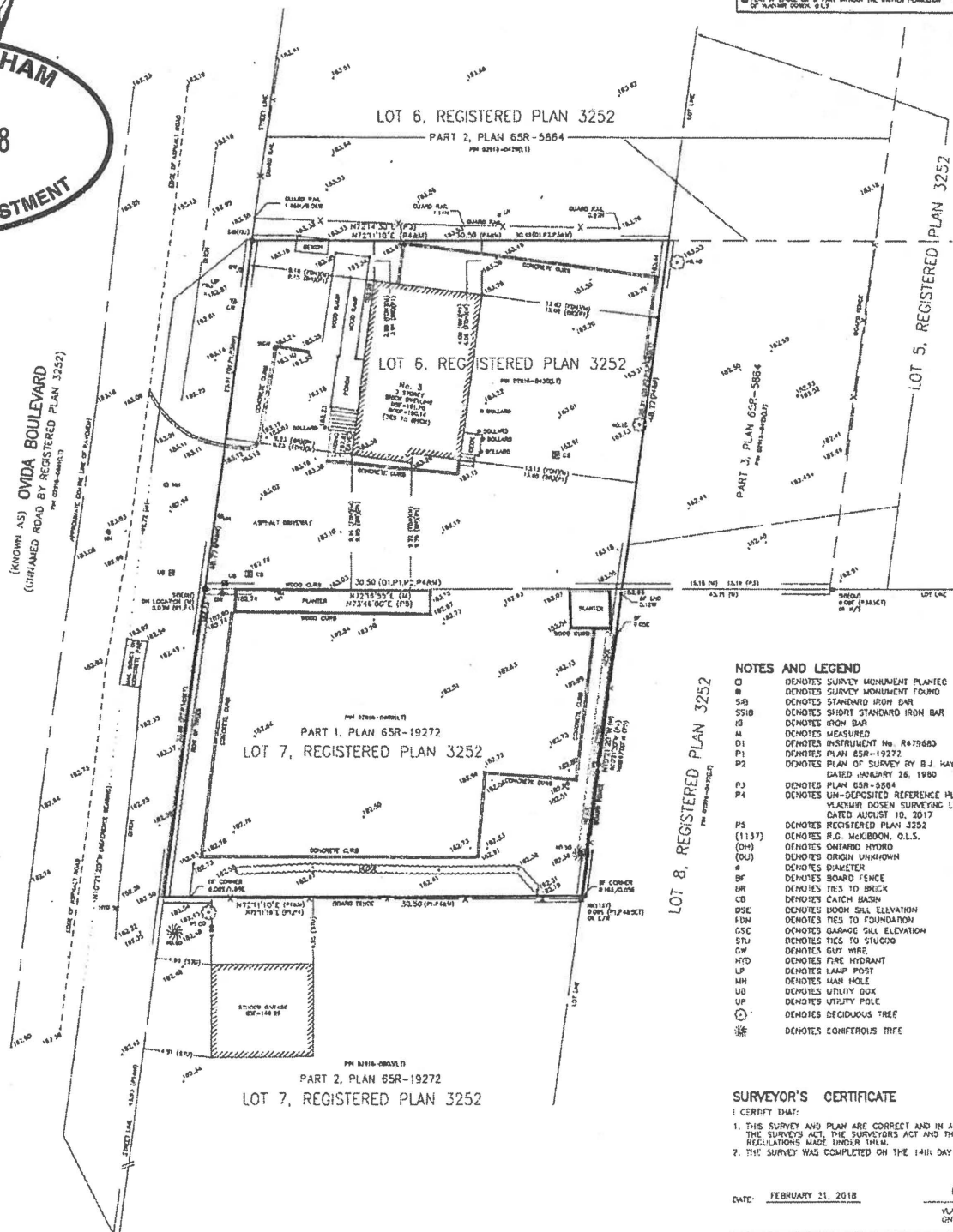
THIS REPORT WAS PREPARED FOR
PETER COLE
AND THE UNDERSIGNED ACCEPTS NO
RESPONSIBILITY FOR USE BY
OTHER PARTIES

PART 2) SURVEY REPORT
DESCRIPTION OF LAND:
PART OF LOTS 6 AND 7,
REGISTERED PLAN 3252
SUBJECT LANDS COMPRISE ALL OF PDS 62714-556(1)
AND 62714-556(2).
REGISTERED EASEMENTS AND/OR RIGHT OF WAYS:
NONE.
BOUNDARY FEATURES:
POSITION OF FENCES AS SHOWN ON PLAN.
COMPLIANCE WITH MUNICIPAL ZONING BY-LAWS:
THIS PLAN DOES NOT CONFORM WITH ZONING
BY-LAWS.

SURVEYOR'S REAL PROPERTY REPORT
PART 1) PLAN AND TOPOGRAPHIC DETAIL OF
PART OF LOTS 6 AND 7
REGISTERED PLAN 3252
CITY OF MARKHAM
REGIONAL MUNICIPALITY OF YORK
SCALE 1:200

VLADIMIR DOSEN SURVEYING, O.L.S.
NO PERSON MAY COPY, REPRODUCE, OR ALTER THE
PLAN OR SCALE OR IN PART WITHOUT THE WRITTEN PERMISSION
OF VLADIMIR DOSEN, O.L.S.

CITY OF MARKHAM
RECEIVED
AUG 07 2018
COMMITTEE OF ADJUSTMENT



- NOTES AND LEGEND**
- DENOTES SURVEY MONUMENT PLANTED
 - DENOTES SURVEY MONUMENT FOUND
 - SS18 DENOTES STANDARD IRON BAR
 - IS DENOTES IRON BAR
 - DI DENOTES MEASURED
 - P1 DENOTES INSTRUMENT No. R479683
 - P2 DENOTES PLAN 65R-19272
 - P3 DENOTES PLAN OF SURVEY BY B.J. HAYNES, O.L.S., DATED JANUARY 26, 1980
 - P4 DENOTES PLAN 65R-5564
 - P5 DENOTES UN-DEPOSITED REFERENCE PLAN BY VLADIMIR DOSEN SURVEYING LTD., O.L.S., DATED AUGUST 18, 2017
 - (1137) DENOTES R.G. MCKIBBON, O.L.S.
 - (OH) DENOTES ONTARIO HYDRO
 - (OU) DENOTES ORIGIN UNKNOWN
 - DENOTES DIAMETER
 - BF DENOTES BOARD FENCE
 - BR DENOTES BRICK
 - CB DENOTES CATCH BASIN
 - DSE DENOTES DRAINAGE SILL ELEVATION
 - ISH DENOTES TIES TO FOUNDATION
 - CSC DENOTES GARAGE SILL ELEVATION
 - STU DENOTES TIES TO STUCCO
 - OW DENOTES OUT WIRE
 - HYD DENOTES FIRE HYDRANT
 - LP DENOTES LAMP POST
 - MH DENOTES MAN HOLE
 - UB DENOTES UTILITY BOX
 - UP DENOTES UTILITY POLE
 - DENOTES DECIDUOUS TREE
 - ☼ DENOTES CONIFEROUS TREE

SURVEYOR'S CERTIFICATE
I CERTIFY THAT:
1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEY ACT, THE SURVEYORS ACT AND THE REGULATIONS MADE UNDER THEM.
2. THE SURVEY WAS COMPLETED ON THE 14th DAY OF FEBRUARY, 2018

DATE: FEBRUARY 21, 2018
VLADIMIR DOSEN, O.L.S.
ONTARIO LAND SURVEYOR

VLADIMIR DOSEN SURVEYING
ONTARIO LAND SURVEYORS
555 DAVISVILLE AVENUE
TORONTO, ONTARIO M4S 1J2
PHONE (416) 468-0440 EMAIL: vladdosen@rogers.com

JOB No. 17294	DRAWN BY: KP
FILE: 16-133	CHECKED BY: VP
CAD FILE: 3-0704-BOSVARD	

THIS IS DRAWING NO. S-11

REFERRED TO IN SECTION

OF AN AGREEMENT BETWEEN THE
TOWN OF MARKHAM AND Dermabeautique Corporation and
Beverly Lynde
DATED: Approved September 28, 2000

The original may be viewed at the Town office.

CITY OF MARKHAM
RECEIVED

AUG 07 2018

COMMITTEE OF ADJUSTMENT

