

Memorandum to the City of Markham Committee of Adjustment

January 14, 2020

File: A/99/19
Address: 120 Doncaster Avenue, Thornhill
Applicant: Bobby James & Associates (Bobby James)
Hearing Date: Wednesday January 22, 2020

The following comments are provided on behalf of the West Team:

The applicant is requesting relief from the following requirements of By-law 2053, Industrial (M) zone, as amended:

a) Section 8 (iii) - Commercial Permitted Land Uses:

to permit a motor vehicle sales establishment, whereas the By-law does not permit this commercial use;

b) Section 9 - Prohibited Land Uses:

to permit outdoor storage, display and sales area of motor vehicles, whereas the By-law does not permit outdoor/open storage of vehicles;

The requested variances relates to a proposed Automotive Sales Establishment and a separate outdoor storage yard.

BACKGROUND

Property Description

The 8113.12 m² (87,328.89 ft²) subject property is located on the north side of Doncaster Avenue, west of Henderson Avenue and east of Yonge Street adjacent to the CN Rail corridor. The surrounding properties to the east, west and south of the property, across Doncaster Avenue contain industrial buildings with a mix of limited commercial and industrial uses. There is an existing 1,349 m² industrial building on the property.

Proposal

The applicant is proposing a motor vehicle sales, repair facility and auto parts sales establishment. The proposal also includes indoor and outdoor storage, display and sales area for motor vehicles.

Official Plan and Zoning

Official Plan 2014 (partially approved on November 24/17, and further updated on April 9/18)

The 2014 Official Plan designates the subject property 'Service Employment', which provides for a range of service and retail uses together with light industrial, warehousing and office uses. The Service Employment policies provide for motor vehicle sales with limited outdoor storage or display of motor vehicles as discretionary uses accessory to a permitted use, subject to a site specific development application for zoning approval.

Provisions for Outdoor Display or Outdoor Storage are identified in Section 8.13.6 of the Official Plan. Section 8.13.6 states that the outdoor display of merchandise and related services are only provided in conjunction with a business located on the same property.

The property is also subject to Site Specific Policy 9.18.17 that provides for outside vehicle storage associated with a motor vehicle repair use on the property. A motor vehicle repair

facility was the use that operated within the existing building on the property when the Official Plan was adopted by Council.

Zoning By-Law 2053

The subject property is zoned Industrial (M) under By-law 2053, as amended by By-law 280-81, which permits industrial uses including motor vehicle repair, motor vehicle body shops, warehousing, manufacturing, assembly and storage of goods within enclosed buildings. Limited retail sales accessory to a permitted industrial use on the same lot are also permitted. A motor vehicle sales establishment is not a permitted use. Outdoor storage yards for vehicles are a prohibited use.

Zoning Preliminary Review (ZPR) Undertaken

The owner has completed a Zoning Preliminary Review (ZPR) on October 25, 2019 which confirmed that the proposed use of the subject property for motor vehicle sales and outdoor storage of motor vehicles are not permitted uses on the property.

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.

Motor Vehicle Sales Establishment Variance

The applicant is requesting a variance to permit a motor vehicle sales establishment on the subject lands; whereas motor vehicle sales are not permitted by the zoning by-law.

It is Staff's understanding that the motor vehicle sales establishment office is proposed as an accessory use to the storage and repair of automobiles within the existing building. However, the Service Employment policies of the Official Plan only provide for motor vehicle sales as discretionary uses accessory to a permitted use and subject to a site specific development application for zoning approval, Staff is of the opinion that the requested variance does not meet the general intent and purpose of the Official Plan and Zoning By-law. This request would be more appropriately dealt with by Council through an application to amend the Zoning By-law.

Outdoor Storage Yard Variance

The applicant is also requesting a variance to permit an outdoor storage yard of motor vehicles on the subject property, whereas an outdoor storage yard for motor vehicles is listed as a prohibited use under the Zoning By-law. Based discussions with the applicant, the proposed outdoor storage yard area immediately east of the existing building would be occupied by new vehicles associated with a separate motor vehicle sales establishment that is located in the City of Vaughan (North York Chrysler Jeep Dodge, 7200 Yonge Street). Section 8.13.6 of the Official Plan only permits outdoor storage associated with a motor vehicle repair facility on the same property, whereas the applicant

is proposing an outdoor vehicle storage yard partially to facilitate the storage of motor vehicles for a motor vehicle sales establishment located elsewhere. Staff is of the opinion that the general intent and purpose of the Official Plan is not maintained.

Applicant's Stated Reason(s) for Not Complying with Zoning

The applicant submitted a Planning Rationale in support of the variance application. According to the applicant's rationale, "the proposed accessory use (outdoor storage) was permitted at the time the property was used as a school bus depot in order to store school buses on the property, that the property has historically been used for motor vehicle repair, sales and services, and that the proposed outdoor display and storage of motor vehicles is a legal non conforming use on the property".

Planning Rationale

The applicant did not include any satisfactory evidence in the Planning Rationale of how the outdoor display and storage of motor vehicles meets the criteria for a legal non conforming use on the property. A legal non-conforming use is a use of land not permitted by the current by-law but was permitted by a previous by-law. In addition, the applicant has not adequately addressed why the minor variance application is appropriate, given that the Service Employment designation in the Official Plan only provides for the proposed motor vehicles sales and outdoor storage uses as discretionary uses ancillary to a permitted use, subject to a site specific development application for zoning approval.

It is the opinion of Staff that the more rigorous review afforded through an Official Plan and Zoning By-law amendment application process is required (if the applicant is proposing outdoor storage of vehicles associated with a motor vehicle sales establishment not on the same property). The minor variance process involves only limited circulation and notification area and a small notification sign. This is a wholly inadequate approval process for the uses being requested when there are issues of non-conformity with the zoning By-law and the discretionary nature of the use, as identified in the Official Plan.

Approval of the requested minor variance may set a precedent for the encroachment of other discretionary uses in Markham through the minor variance approval process. Therefore, the proposed uses should be evaluated through the appropriate planning review process and circulation and dealt with by Council through Official Plan and Zoning By-law amendment applications.

Staff further note that a variance under Section 45 of the Planning Act cannot permit a use that is prohibited in the Zoning By-law. Consequently, Staff is of the opinion that the outdoor storage of motor vehicles use is specifically *prohibited* by Zoning By-law 2053, as amended, and does not meet the intent and purpose of the Zoning By-law.

PUBLIC INPUT SUMMARY

No written submissions were received as of January 14, 2019. It is noted that additional information may be received after the writing of the report, and the Secretary-Treasurer will provide information on this at the meeting.

CONCLUSION

Planning Staff have reviewed the application with respect to Section 45(1) of The Planning Act, R.S.O. 1990, c. P.13, as amended, and are of the opinion that the variance requests to permit a motor vehicle sales establishment and outdoor storage, display and sales area

of motor vehicles does not meet the four tests of the Planning Act and recommend that this request be more appropriately dealt with by Council through applications to amend the Official Plan and Zoning By-law.

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.

Staff recommend that the Committee consider public input in reaching a decision.

PREPARED BY:



Rick Cefaratti, MCIP RPP, Senior Planner, West District

REVIEWED BY:



David Miller, MCIP RPP, Manager, West District

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