



**Planning Report**

TO:                                      Committee of Adjustment

FROM:                                  Ted Horton  
                                                  Planner

DATE:                                   July 10, 2019

RE:                                      Application for Minor Variance **D13-A11-19**  
                                                  17305 Leslie Street  
                                                  Made by: BIROCK INVESTMENTS INC.

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**1. Recommendations:**

That Minor Variance Application D13-A11-19 be approved, subject to the following conditions:

- 1. That the variance pertains only to the request as submitted with the application.

**2. Application:**

An application for a minor variance has been submitted by the above-noted owner to request relief from Zoning By-law Number 1979-50 as amended by By-laws 1980-88 and 2010-56, in order to permit a Commercial Athletic Centre where this use is not specifically permitted.

The above-described property (herein referred to as the “subject lands”) is a commercial lot with multiple structures on the northeast corner of Leslie Street and Stackhouse Road. The subject lands are occupied by a number of commercial plaza buildings. The existing uses range from retail and restaurants to offices.

**3. Planning considerations:**

The applicant is requesting relief from the By-law in order to permit a Commercial Athletic Centre where this use is not specifically permitted. Zoning By-law 1979-50 does not define this use. Committee previously granted a similar variance for the subject lands under file D13-A22-17 which permitted a Day Nursery and a Commercial Athletic Centre, but imposed conditions related to the size and location of each. The current application would add the requested use as a permission by right.

The requested relief is presented below.

Relief	By-law	Section	Requirement	Proposed
1	1979-50	24.1	Permitted uses do not include a Commercial Athletic Centre	To include a Commercial Athletic Centre as a permitted use

The subject land is unique among the surrounding properties in that it remains subject to Zoning By-law 1979-50 as amended and is not captured by By-law 2010-40. This is due to a zoning by-law amendment application for the subject lands that was under appeal at the Ontario Municipal Board (OMB) when the Town prepared and adopted By-law 2010-40.

The subject lands are zoned Local Shopping Centre (C4) by By-law 1979-50 as amended. The C4 zone permits a range of commercial uses such as retail stores, personal service shops, and offices. For the convenience of Committee, the list of permitted uses is presented below.

SECTION 24 - LOCAL SHOPPING CENTRE COMMERCIAL (C4) ZONE

The following provisions shall apply to all Local Shopping Centre Commercial (C4) Zones.

24.1 PERMITTED USES

No person shall hereafter within a Local Shopping Centre Commercial (C4) Zone use any land, or erect, alter or use any building or structure for any purpose except one or more of the following uses:

(1) Commercial

Retail stores and personal service shops such as food, produce, grocery and meat stores, drug store, supermarket, barber and beauty shops, mens and ladies' hairstyling establishments, hardware store, bank, credit union office, business and professional offices, camera shops, photo studio, television and radio sales and service shops, bake shop, confectionery, restaurant, take-out restaurant, variety store, convenience store, men and women's wearing apparel, florist, boutiques, wallpaper and paint store, book store, shoe store, pet shop, travel agency, dry cleaners, laundromat and taxi stand.

The requested use is permitted in some nearby zones under By-law 2010-40 such as the Retail Commercial zone south of the subject lands, but is not listed as a permitted use for a C4 zone. Section 1.3 of the same by-law states that "No person shall change the use of any building, structure or land; erect or use any building or structure; or occupy any building or land except in accordance with the provisions of this By-Law." Where a use is defined and does not appear in a table of permitted uses for a zone, it is not permitted in that zone.

The lack of a Commercial Athletic Centre being permitted on the subject lands is in part due to the lands being subject to By-law 1979-50, and in part due to the outcome of the hearing of the OMB in which the Town and the Region advanced concerns that the use of the subject lands for fully retail purposes would dilute the aims of providing a strong employment base for the Town, a position which the Board recognized, stating that "an office building to a maximum of six storeys and a density of 1.5 FSI will be a prominent component." The Town maintains the position that the office building as approved by the OMB and appearing on the approved site plan will provide for office uses in a manner that maintains an appropriate and desirable mix of employment uses.

Section 45 (2) (b) of the Planning Act grants the Committee of Adjustment the power to, where a use is defined in general terms, to permit the use of land for a purpose that, in the opinion of the committee, conforms with the uses permitted in the by-law. Uses similar to a Commercial Recreation Facility are permitted in the C4 zone.

In considering a variance under section 45 (2) (b), the Committee is not required to consider the four tests that are typically considered for a 45 (1) variance. Rather, the committee need only be satisfied

that the proposal is desirable for the appropriate development of the subject lands and that its impact upon surrounding uses is not unacceptably adverse.

Recognizing that the proposed use has previously been granted and exists as a permission in the types of zones that are nearby and would have likely been applied to this property had it been encompassed in Zoning By-law 2010-40, and that the use as proposed is similar in nature to ones that are permitted by the zoning by-law, the proposal is desirable for the appropriate development of the subject lands and its impact upon surrounding uses is not unacceptably adverse.

**4. Other comments:**

**4.1 Tree protection**

The subject lands have an approved site plan agreement that provides for landscaping and the protection of trees and vegetation on the property in accordance with the Tree Preservation, Protection, Replacement and Enhancement Policy.

**4.3 Effect of Public Input**

Planning Services received no public input on this application as of the time of writing this report.

**4.4 Interim Control By-law**

On January 21<sup>st</sup>, 2019 Council adopted an Interim Control By-law under Section 38 of the *Planning Act*. The Interim Control By-law limits the ability to increase the floor area or height of residential dwellings throughout its study area, which does not include the lands subject to this minor variance application. Accordingly the by-law has no force or effect on this application.

**4.5 Commenting agencies and departments**

Comments from Building Services were not available as of the date of writing this report.

Comments from Engineering Services were not available as of the date of writing this report.

The Regional Municipality of York has no comment on the application.

**5. Conclusions:**

The proposed use is defined in general terms, and in the opinion of the committee, conforms with the uses permitted in the by-law.

Respectfully submitted,



Ted Horton, MCIP, RPP  
Planner