



PLANNING AND BUILDING SERVICES

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Planning Report

TO: Committee of Adjustment

FROM: Ted Horton, MCIP, RPP
Planner

DATE: August 12, 2019

RE: Application for Minor Variance **D13-A17-19**
145 Pony Drive
Made by: NEWMARKET COMMUNITY CHURCH

1. Recommendations:

That Minor Variance Application D13-A17-19 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 2010-40 as amended, in order to allow an elementary school use within the existing church where this use is not permitted. The applicant intends to include Christian elementary school classes within the church structure in addition to the regular religious observances.

The above-described property (herein referred to as the "subject lands") is located on the east side of Pony Drive between Harry Walker Parkway and Stellar Drive. The subject lands are occupied by a single structure.

3. Planning considerations:

The applicant is requesting relief from the By-law in order to permit an elementary school where this use is not specifically permitted. Zoning By-law 2010-40 does not permit the existing place of worship or an elementary school in the EG zone.

The requested relief is presented below.

Relief	By-law	Section	Requirement	Proposed
1	2010-40	6.5.1	Permitted uses do not include an elementary school	To include an elementary school as a permitted use

The subject lands are zoned General Employment (EG) by By-law 2010-40 as amended. The EG zone permits a range of employment, industrial, and commercial uses such as offices, manufacturing, and warehouses.

For context, the property did not permit a place of worship under the zoning by-law when it was first developed in the late 1990's under the M2 zone. After the initial user of the property closed, the Committee of Adjustment approved a minor variance to allow a place of worship on the property in 2002. In 2006 the Town adopted a new Official Plan to align with the Provincial Policy Statement and Growth Plan for the Greater Golden Horseshoe that were approved by the province at the time.

The 2006 Official Plan laid out that only existing sensitive land uses such as places of worship would be permitted, and that the zoning by-law would direct these uses away from the employment lands, following these provincial plans that sought to maintain employment lands for more purely employment uses. The zoning by-law that Council adopted in 2010 to enact the policies of the Official Plan accordingly did not permit any places of worship or schools in the employment lands. Thus, the church became legally non-conforming and is also not permitted to add a school use to the property without relief from the by-law.

In addition to the more commonly-exercised power to grant minor variances under Section 45(1) of the Planning Act, Committee is further empowered to grant variances in situations involving legal nonconforming uses such as this. Legal nonconforming rights are the ability of a property to continue to be used in a manner that was legal before and at the time that a zoning by-law changes to prohibit the use. Section 34(9) of the Planning Act outlines that zoning by-laws cannot frustrate the ability of properties to be used for a purpose that was legal, stating:

34 (9) No by-law passed under this section applies, (a) to prevent the use of any land, building or structure for any purpose prohibited by the by-law if such land, building or structure was lawfully used for such purpose on the day of the passing of the by-law, so long as it continues to be used for that purpose.

For example if a property were used for a car repair shop when a zoning by-law is amended to say the property should only be used for a dentist office, it could continue as a car repair shop indefinitely. However, it could not change to another use (e.g. an office) without losing those legal nonconforming rights. Similarly, it could not change to another use that was previously legal or that is also prohibited (e.g. change over to a motor vehicle sales establishment).

In most cases these legal nonconforming rights are strictly limited to the prohibited activity that occurred when the by-law changed. However, the Planning Act allows Committee to evaluate and grant variances that allow some evolution in legal nonconforming rights. Section 45 (2) (a) (i) outlines this power, saying that Committee can allow a property that is legally nonconforming to also be used for other prohibited purposes if Committee is of the opinion that the proposed use is similar to the existing use, or more compatible than the existing use. The Act states:

(2) In addition to its powers under subsection (1), the committee, upon any such application,

(a) where any land, building or structure, on the day the by-law was passed, was lawfully used for a purpose prohibited by the by-law, may permit,

(ii) the use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it

was used on the day the by-law was passed, if the use for a purpose prohibited by the by-law or another use for a purpose previously permitted by the committee continued until the date of the application to the committee; or

Committee is not required to evaluate the application against the commonly considered “four tests”, as the tests prescribed by the Planning Act for this type of application are different. Namely, Committee must be satisfied that including the ability to have elementary school instruction within the existing church is similar to or more compatible than the existing place of worship use.

Council has adopted a zoning by-law that seeks to see uses such as this depart from the employment lands over time, as they can pose concerns of conflict with traditional employment uses such as manufacturing due to noise, traffic, and environmental effects. However, the place of worship use has taken place for the past 17 years without incident and would not significantly increase the potential conflict between uses that may already occur due to this legally nonconforming use. As the test prescribed by the Planning Act for this type of application is whether the additional use is similar to or more compatible than the existing use, staff are of the opinion that the additional use of an elementary school within the church is similar to the existing legally nonconforming place of worship. Accordingly, staff are of the opinion that this test is met.

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 21st, 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

The Chief Building Official notes that a Record of Site Condition may be required under the *Environmental Protection Act*.

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 similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed.

Respectfully submitted,



Ted Horton, MCIP, RPP
Planner