



PLANNING AND BUILDING SERVICES
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Planning Report

TO: Committee of Adjustment

FROM: Ted Horton
Senior Planner, Community Planning

DATE: November 8, 2019

RE: Application for Minor Variance **D13-A22-19**
300 Mulock Drive
Made by: 1029358 ONTARIO LIMITED

1. Recommendations:

That Minor Variance Application D13-A22-19 be approved, subject to the following conditions:

1. That the variance pertains only to the request as submitted with the application;
2. That the applicant be required to enter into a site plan agreement with the Town for the development of the lands;
3. That the development be substantially in accordance with the sketch submitted with the application;
4. That the Owner shall obtain a permit from the LSRCA for works with the area Ontario Regulation 179/06 under the Conservation Authorities Act
5. That the Owner shall, prior to the issuance of site plan approval, submit to the Town and LSRCA a topographic survey, and demonstrate to the satisfaction of the LSRCA that the depth of flooding on the site does not exceed 0.8m.

2. Application:

An application for a minor variance has been submitted by the above-noted owner to permit the enlargement of a legal nonconforming use. The applicant is proposing to enlarge the existing motor vehicle sales facility (car dealership) despite this use not being permitted on the property by the zoning by-law.

The above-described property (herein referred to as the "subject lands") is a lot located on the south side of Mulock Drive to the west of the rail corridor. The lot is occupied by an existing motor vehicle sales facility and a large wetland. The subject lands are zoned General Employment (EG) on the northwestern part of the property where the existing motor vehicle sales facility is located, and Open Space – Environmental Protection (OS-EP) on the southwest where the wetland is located. There is one existing structure, being the motor vehicle sales facility.

3. Planning considerations:

The applicant is requesting relief from the by-law in order to permit the enlargement of the existing motor vehicle sales facility despite Zoning By-law 2010-40 not permitting a motor vehicle sales facility in the General Employment zone.

The requested relief is presented below.

Relief	By-law	Section	Requirement	Proposed
1	2010-40	6.5.1	Permitted uses do not include a motor vehicle sales facility	To permit the enlargement of a legally nonconforming motor vehicle sales facility

5.1 Legally nonconforming rights

Section 34 of the Planning Act empowers municipalities to pass zoning by-laws that regulate the use of land and buildings. Section 34(9) sets out in statute the longstanding common law principle of acquired rights and prohibits zoning by-laws from interfering with the ability to use land in a way that was legal and is later prohibited by a zoning by-law. The section reads:

(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.

Often referred to as “grandfathering”, legally nonconforming rights are uses or development standards that were legal on a property and then due to changes in zoning became prohibited. So long as the use continues without interruption, municipalities have no ability to use a zoning by-law to cause the use to cease. That use can be continued within the bounds of the existing building. However, in order to expand the use beyond the building as it existed on the day when the use became legally nonconforming, permission in the form of an amending zoning by-law or relief from the Committee of Adjustment is required.

The application is made under Section 45(2) of the Planning Act. This section empowers the Committee of Adjustment to allow for legally nonconforming uses to expand beyond the building where their use was located. The section reads:

[W]here 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,

(i) the enlargement or extension of the building or structure, if the use that was made of the building or structure on the day the by-law was passed, or a use permitted under subclause (ii) continued until the date of the application to the committee, but no permission may be given to enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the by-law was passed.

3.2 Legally nonconforming status of subject lands

The subject lands were zoned Light Industrial Second (M2) by Zoning By-law 1979-50, as amended, until the Council of the Town of Newmarket repealed that by-law and enacted Zoning By-law 2010-40 for the subject lands and much of the town. Under By-law 1979-50, the M2 zone permitted a motor vehicle sales facility. With the adoption of 2010-40, Council zoned the lands General Employment (EG), which does not permit a motor vehicle sales facility. A motor vehicle sales facility was legally operating on the subject lands on the day that the use became prohibited, and the use has continued since that time.

3.3 Application

The applicant is intending to develop a significantly larger motor vehicle sales facility on the subject lands. The development of the lands will require site plan approval under Section 41 of the Planning Act. In order to be permitted to do so, permission from Committee to expand the legally nonconforming use is required. It should be noted the application is not to add a motor vehicle sales facility as a permitted use, only to allow one's expansion – the use will remain legally nonconforming.

Details of the proposed development can be found in the site plan and elevation plan submitted by the applicant. All other elements of the development (e.g. parking requirements, setbacks, building height, coverage, etc) will be required to conform to the zoning by-law. No relief is sought for any performance standards, only to allow the expansion of the use to a larger building. There is no statutory requirement to retain a part or portion of the existing building in order to enlarge the legally nonconforming use.

The test for whether Committee should allow the expansion of a legally nonconforming use is not the four tests commonly applied to an application under Section 45(1) of the Planning Act. The Act provides no such specific guidance on the grounds that Committee should consider, beyond the general requirement that all planning decisions are consistent with and conform to superior policy documents such as the Provincial Policy Statement and applicable provincial plans.

Rather, guidance is found in common law through decisions on applications such as *Central Jewish Institute v. Toronto (City)*, [1948] S.C.R. 101, *Saint-Romuald (Ville) c. Oliver*, [2001] 2 S.C.R. 898, and *TDL Group Corp., Re* (2009) 63 O.M.B.R. 199. In these cases the courts have held that with the passage of time, flexibility is required, normal evolution may occur, and the updating of a building or structure may be required to adapt, modernize and maintain the integrity of the building.

The balance to be considered in an application such as this is whether the proposal would create undue additional or aggravated problems for the municipality, local authorities or the neighbours as compared with what went before. Such concerns, including adverse neighbourhood effects, must be balanced against one another where the owner is proposing a modification or extension of the building or structure.

In the case of this application, the existing motor vehicle sales facility has operated without significant negative impact for an extended period of time. Similar land uses exist in the surrounding area, and sensitive land uses that might be impacted by the proposed expansion are not located in close proximity. The overall physical change to the site is related to the building and not the overall impervious surface area and thus impact to the adjacent wetland is anticipated to be minimal, and any physical changes can be managed through the site plan approval process.

In summary, the legally nonconforming motor vehicle sales facility's proposed expansion does not, in staff's opinion, constitute a concern of community impact. The proposed expansion is a reasonable evolution of a legally nonconforming use that does not conflict with superior policy documents, and should be approved.

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.

4.4. Mulock GO Station Area Secondary Plan

The Town has initiated a planning study to adopt an Official Plan Amendment in the form of a secondary plan for the area around the potential future Mulock GO train station. The study area includes the subject lands. Council has not adopted any amending policy documents, and as such there is no basis on which to consider this application in light of a future secondary plan.

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 are reflected in the recommendations of this report.

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

The Lake Simcoe Region Conservation Authority has reviewed the application due to the subject lands being partially within the area governed by Ontario Regulation 179/06 under the Conservation Authorities Act. Development within the area requires a permit from the LSRCA, along with compliance with the Lake Simcoe Protection Plan. The recommended conditions of the LSRCA are reflected in the recommendations of this report.

5. Conclusions:

The proposed use represents good planning and should be approved.

Respectfully submitted,



Ted Horton, MCIP, RPP
Senior Planner, Community Planning