



PLANNING AND BUILDING SERVICES

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Planning Report

TO: Committee of Adjustment

FROM: Ted Horton
Senior Planner, Community Planning

DATE: January 15th, 2020

RE: Application for Minor Variance **D13-A26-19**
665 Davis Drive
Made by: 2680653 ONTARIO LIMITED

1. Recommendations:

That Minor Variance Application D13-A26-19 be approved, subject to the following conditions:

1. That the variance pertains only to the request as submitted with the application;
2. That the development be substantially in accordance with the sketch submitted with the application; and,
3. That the Owner shall obtain a permit from the LSRCA for works with the area Ontario Regulation 179/06 under the Conservation Authorities Act

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 expand the existing medical office despite this use not being permitted on the property by the zoning by-law. The application looks to add an addition to the building to allow for an elevator, in order to improve the building's accessibility.

The above-described property (herein referred to as the "subject lands") is located on the north side of Davis Drive, west of Patterson Street. The lot is occupied by an existing multi-unit building, inclusive of the medical clinic. The subject lands are designated Parks and Open Space and Mixed Use within the Urban Centres Secondary Plan. The subject lands are zoned Open Space First (OS-1) on the southeastern portion of the property, where the existing medical clinic is located, Open Space Third (OS-3) on the northern portion of the property, and Mixed Use (MU-2) on the northwestern portion of the property.

3. Planning considerations:

The applicant is requesting relief from the by-law in order to permit an addition to the existing medical clinic to allow for an elevator, despite Zoning By-law 2010-40 not permitting a medical clinic in the Open Space (OS-1) Zone.

The requested relief is presented below.

Relief	By-law	Section	Requirement	Proposed
1	2010-40	6.7.1	Permitted uses do not include a medical clinic facility	To permit the enlargement of a legally nonconforming medical clinic facility

3.1 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 legally occurring when such as use became 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 Healthcare Urban Centre Complementary 1 (UC-HC1) Zone with Floodplain Overlay (FP), Floodplain, and Other Natural Hazards Overlay (FP-NH) by Zoning By-law 2010-40, as amended. In 2019, the Council of the Town of Newmarket repealed Zoning By-law 2010-40 for these lands and enacted Zoning By-law 2019-06 for the subject lands and much of the Yonge Street and Davis Drive area following the adoption of the Urban Centres Secondary Plan.

Under By-law 2010-40, the UC-HC1 zone permitted a medical offices, offices, and a range of other uses. With the adoption of 2019-06, Council zoned the lands Open Space (OS-1), which does not permit a medical office. The Open Space zone reflects the watercourse and floodplain that affects the property and plans for the long-term return of the property to a more open space use that protects the riparian area. A medical office was legally operating on the subject lands on the day that the use became prohibited, and the use has continued since that time, and thus is legally nonconforming.

3.3 Application

The applicant is intending to add an addition to the southwestern side of the exiting building. The proposed two-storey addition will be 14.92 square metres and will accommodate an elevator to allow access to the second floor. Permission from Committee is required to expand the legally nonconforming use. It should be noted the application is not to add a medicinal clinic 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 submitted by the applicant. No relief is sought for any performance standards, only to allow the expansion of the use to a larger building.

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 medical clinic has operated without significant negative impact for an extended period of time. In addition, similar land uses exist in the surrounding area. 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 watercourse is anticipated to be minimal. The building addition is minor in size, and adverse impacts to neighbouring properties are not anticipated. The building addition will accommodate an elevator, allowing greater accessibility for a medical use.

In summary, the proposed building addition to the legally nonconforming medical office does not, in staff's opinion, constitute a concern of community impact. The proposed addition 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.

4.5 Commenting agencies and departments

Building Services have indicated they have no objections to this request.

Engineering Services have indicated they have no objections to this request.

The Regional Municipality of York has provided 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,

A handwritten signature in blue ink, appearing to read 'Ted Horton', is positioned above the printed name.

Ted Horton, MCIP, RPP
Senior Planner, Community Planning