



## PLANNING AND BUILDING SERVICES

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### Planning Report

TO: Committee of Adjustment

FROM: Adrian Cammaert, MCIP, RPP

DATE: October 21, 2020

RE: Application for Minor Variance **D13-A18-2020**  
17080 Bathurst Street  
Town of Newmarket  
Made by: SYBAN INDUSTRIES LIMITED

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#### 1. Recommendations:

That Minor Variance Application D13-A18-2020 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-law 1988-93, By-law 1989-68, By-law 1993-145 and By-law 1999-38, to permit a Medical Office as a Professional Office, where this use is not permitted within the current zoning.

The above-described property (herein referred to as the “subject lands”) is a commercial lot located west of Bathurst Street. The subject lands contain a commercial plaza building, which includes existing commercial uses such as restaurant, personal service shop and retail uses.

#### 3. Planning considerations:

The applicant is requesting relief from the By-law in order to permit a medical office as a Professional Office, where this use is not permitted. This current application would add the requested use as a permission by right on this property.

The requested relief is presented below:

Relief	By-law	Section	Requirement	Proposed
1	1979-50	21.1	A Medical Office is not permitted as a Professional Office.	To permit a Medical Office as a Professional Office.

The subject lands are zoned Convenience Commercial (C1) Zone under Zoning By-law 1979-50, as amended by By-law 1988-93, By-law 1989-68, By-law 1993-145 and By-law 1999-38. Zoning By-law 1979-50 has been largely replaced by Zoning By-law 2010-40, however there are some areas of Town which are still regulated by Zoning By-law 1979-50, such as this property. The C1 Zone permits a range of commercial uses such as grocery stores, drug stores, barbers and beauty shops. However, a “Professional Office” (including medical office) was not a permitted use.

In 1989, the Zoning By-law was amended by By-law 1989-68, to add “Professional Office” (including medical office) as a permitted use. “Professional Offices” is defined as:

*“Section 3.125 Professional Office:*

*means the use of a building or part of a building by professionally qualified people and without limiting the generality of the foregoing **shall include a doctor’s office, a lawyer’s office, a dentist’s office, an architect’s office, a stock broker’s office, an accountant’s office.**”*

Subsequently, in 1999, the Zoning By-law was further amended by By-law 1999-38 to allow for additional permitted uses including:

- pet supplies store
- florist/flower shop
- dry-cleaning depot
- dry goods retailer
- photo-finishing store
- video rental store
- tanning salon
- a maximum of one fast-food outlet

However, this By-law also contained the following clause:

*“Providing that notwithstanding Bylaw Number 1989-68, no **medical practitioner office(s)** shall be permitted for lands zoned C1 on Schedule 'X' attached hereto.”*

Staff researched the rationale for the 1999 decision to remove “*medical practitioner office(s)*” as a permitted use, however no such information could be found.

In summary, the original 1979 zoning applicable to the property did not permit professional offices (including medical offices), then it was amended in 1989 to permit professional offices (including medical offices), then in 1999 it was amended once again not to permit medical practitioner offices.

## **Planning Act Process**

Unlike most minor variance applications, this application is being considered under Section 45 (2) (b) of the Planning Act, as opposed to Section 45 (1) which requires assessing proposed variance applications under the 4 tests. Section 45 (2) (b) 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.

The proposed use, being a Medical Office, is defined to be a *Professional Office* by Zoning By-law 1979-50. Therefore, the use is defined as per the requirement of the Planning Act.

Secondly, the Committee must be satisfied that the proposal conforms with the uses permitted in the by-law. In determining whether a use conforms with the uses permitted in the by-law, previous OMB decisions have concluded that there is no authority to authorize a variance that would add a use that is expressly “prohibited” by the by-law. The use of the word “prohibited” is important, as it carries a greater significance than, and is distinct from, uses that are “not permitted”. Prohibited uses are typically those that are known to cause nuisance or human health implications or have otherwise

been identified by a Council. Conversely, uses that are “not permitted” are routinely added and removed in certain zones through established planning processes. It is a much larger process to contemplate the same for “prohibited” uses due to compatibility and human health concerns, among others.

Like most zoning by-laws, the applicable zoning by-law in this case (1979-50) contains a list of explicit Prohibited Uses (Section 6.40); of importance, the proposed “*Professional Office*” is not included in the section.

Because the proposed use is a) defined by the zoning by-law, and b) is not a ‘prohibited use’ as per the zoning by-law, it can be considered through the variance process under Section 45 (2) (b) of the Planning Act.

### Compatibility

When considering a new use (even one that was previously permitted, as is the current situation), general compatibility with the local area must be assessed. The proposed medical office use, as included in the “*Professional Office*” definition, is compatible with other commercial uses in the plaza. The existing plaza contains restaurant, personal service shops and retail stores, as shown in the photos below:



Figure 1 - Plaza looking north



Figure 2 - Plaza looking south

Immediately to the north of the subject site are residential uses in the form of a row of townhouses. These townhouses are currently mitigated from the existing commercial plaza by a landscaped buffer with vegetation and a privacy fence. The introduction of a medical office on the plaza is not anticipated to require any additional mitigation measures.

An examination of the zoning of other commercial plazas was undertaken to determine if they allow medical offices. It was found that this is not an uncommon situation as Zoning By-law 2010-40 contains multiple Commercial Zones including the Convenience Commercial (CC) and Service Commercial (CS) Zones which both permit Medical Offices and Sole Medical Practitioners by-right.

It is staff's opinion that the proposed medical office use will not vary greatly from the uses which are currently permitted in Commercial Zones within Zoning By-law 2010-40. A medical office does not vary greatly from a different type of Professional Office which is currently permitted on the subject lands (such as a lawyer's office), and defined by the By-law.

Recognizing that the proposed use exists as a permission within the C1 Zone and within the Commercial Zones of 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 determined by staff to be desirable for the appropriate development of the subject lands and its impact upon surrounding uses is not unacceptably adverse. Finally, it is staff's opinion that a medical office is generally compatible with the surrounding area and contributes to the formation of a complete, walkable community.

**4. Other comments:**

**4.1 Heritage**

The property is not designated under the Ontario Heritage Act or on the municipal list of non-designated properties.

**4.2 Commenting agencies and departments**

Comments from Building Services were not available at the time of writing this report.

Engineering Services has no objection to this application.

The Regional Municipality of York had advised of no comment on this application.

**4.3 Effect of Public Input**

No public input was received as of report deadline.

**5. Conclusions:**

The proposed use is defined by the zoning by-law, is not a "prohibited use" as per the applicable zoning by-law, forms part of a complete and walkable community, and represents good planning.

Respectfully submitted,



Adrian Cammaert, MCIP, RPP  
Manager (Acting), Planning Services