

TORONTO STAFF REPORT

November 24, 2006

To: Chairman and Members of the Committee of Adjustment
North York Panel

From: Thomas C. Keefe, Director, Community Planning, North York District

Subject: File Number: A0816/06NY
Owners: Premium Properties Ltd.
18, 20, 22 and 26 Poyntz Avenue and 11, 15, and 19 Bogert Avenue.
Ward: Willowdale (23)

APPLICATION:

This is an application under Section 45 of the Planning Act, for variance from the provisions of the North York Zoning By-law 7625, as amended, to permit a Car Rental Agency use and an ancillary paid parking lot use on an interim basis.

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW :

1. Proposed interim Car Rental Agency use and ancillary paid parking lot use
WHEREAS a Car Rental Agency use and ancillary paid parking lot uses are not permitted;
2. Proposed maximum 107 surface parking spaces, of which 73 surface parking spaces are devoted to an ancillary paid parking lot
WHEREAS 4 surface parking spaces are permitted; and
3. Existing setback of 5m from Bogert Avenue to the existing trailer in association with an interim car rental agency use and ancillary paid parking lot use
WHEREAS 0.0 m is required.

Comments:

Background:

In its May 6, 2004 meeting, the North York Panel of the City of Toronto's Committee of Adjustment heard a request from Premium Properties Ltd for variances from Zoning By-law 7625, as amended, and from the site specific provisions of Section 64.20-A (103) RM6 (103) of Zoning By-Law 7625.

City staff reported that the subject variances related to interim parking did not conform to Official Plan policies related to interim uses in the City, or to transportation policies supporting a high transit modal split in the area.

The Committee unanimously refused the application, citing the fact that the variance was not deemed minor, the general intent of the Zoning By-Law was not maintained, and that it was not an appropriate development for the property,

The applicant appealed the application to the Ontario Municipal Board, and in its decision issued November 23, 2004, the OMB allowed the appeal of Premium Properties Ltd., subject to the conditions recommended by Mr. P. Stagl as planning evidence in support of the appeal.

1. The conditions thus approved by the OMB to be used in authorizing the requested variances are as follows:
 - a) such variance relief to be temporary and in effect for a period of two years, to January 1, 2007;
 - b) the parking lot use to be associated with the operation of a car rental use, with the car rental use to be located either on site or on the adjacent 4726 Yonge Street lands;
 - c) the parking lot layout be substantially in accordance with the site plan (Exhibit 4), Attachment 1 to the OMB decision;
 - d) where lighting facilities are provided, they shall be arranged so as to deflect the light onto the car rental storage and parking lot use areas and away from the adjoining residential properties and streets; and
 - e) all areas for car rental storage and parking uses shall be hard surfaced and maintained.

The laying out of a commercial parking lot is defined in subsection 41(1) of the *Planning Act* as a “development” and is subject to Site Plan Control Approval. As such, under subsection 41(4) of the *Act*, no person may undertake any development without the approval of the council of the municipality, or the Municipal Board through an appeal under subsection 41(12) of the *Act*.

Since the November 23, 2004 Decision of the Ontario Municipal Board does not grant Site Plan Control approval as defined in subsection 41(4), because the matter before the Board was an appeal under subsection 45(12) of the *Planning Act* regarding a decision of the Committee of Adjustment, and since the existing the parking operations have been operating without a licence, the City Legal Prosecutions Office began proceedings to cease operation of the parking lot use. A court date is set for February 13, 2007.

It should be noted that the owner has yet to comply with the City’s request that a site plan control approval application be submitted, which is a standard development approval under the Planning Act. The fact that a condition of the OMB’s approval of the variances deals with a site plan drawing used as an exhibit during the hearing does not mean that the November 23, 2004 Decision of the Board grants Site Plan Control Approval under subsection 41(4) of the *Planning Act*.

Current Minor Variance Application:

Premium Properties Ltd. has submitted another minor variance application to extend the temporary use permission of the Car Rental Agency use and ancillary paid parking lot use. In addition, the application requests approval for a maximum 107 surface parking spaces, of which 73 surface parking spaces are devoted to an ancillary paid parking lot, and to permit a 5 metre setback from Bogert Avenue to the existing trailer in association with the proposed interim car rental agency uses and ancillary paid parking lot use.

Consistent with staff's comments from 2004, it is recommended that the Committee refuse the minor variance application. The application does not meet the general purpose and intent of the Official Plan and Zoning By-law, and is not minor in nature.

Official Plan:

The lands are within the North York Centre South area of the North York Centre Secondary Plan approved as part of the new City of Toronto Official Plan. The Secondary Plan designates the lands subject of the variance application as Mixed Use Area C – Maximum 100% Residential use. The permitted uses within this designation include commercial, institutional, residential, public parks and recreational uses. Site Specific Policy 12.20 also applies to the subject lands, to permit a significant residential development consistent with their location within the City Centre.

It should be noted that Section 2.3 of the Secondary Plan provides guidance for interim uses in phased development or prior to completion of development. The policy states:

“Where a development is proposed in phases, interim uses should be shown on site plans submitted for approval. Where development, or a phased development, is not to be promptly developed, the City may require, through a site plan agreement, that the lands be landscaped, or used for other purposes permitted by the Zoning by-law, in order to reduce the impact of delayed development on surrounding lands, the pedestrian environment, and nearby residential neighbourhoods.”

It is clear that the purpose and intent of this policy is to have City Council determine the disposition of lands requiring interim land uses, where permitted by the zoning by-law. Neither of the two proposed interim uses are permitted on the subject lands. The applicant has proposed that the Committee of Adjustment once again permit the interim uses by variance to the zoning by-law.

Zoning:

The subject lands are zoned RM6 (103), as approved by the Ontario Municipal Board. The only permitted uses on the lands are residential (apartment house and uses accessory thereto including recreational amenity area), retail and service commercial uses. The by-law clearly specifies a wide range of permitted uses within the retail and service commercial permissions. Neither the proposed car rental agency use or the ancillary paid parking lot use are listed as permitted uses.

Comments:

The proposed development clearly does not meet the general purpose and intent of the Official Plan, with respect to interim land uses for phased developments and for the transportation objectives of the plan. The proposal also fails to meet the general purpose and intent of the Zoning By-law, which clearly cites the only permitted uses for the lands. The proposal is not minor in nature.

It should be noted that the applicant indicated in their 2004 minor variance submission that the car rental agency use and ancillary paid parking lot use would be temporary, and that they would be proceeding with the necessary site plan approvals for the ultimate planned redevelopment of the lands as set out in the relevant official plan and zoning by-law previously approved by the OMB. In its November 23, 2004 decision, the OMB found the temporary uses, **for a limited period**, to be desirable and minor. The OMB established January 1, 2007 as the appropriate time for the temporary uses to cease on the site, and therefore no extensions should be approved.

Should the minor variance application be approved by the Committee of Adjustment or the Ontario Municipal Board, it is requested that the following conditions be imposed:

1. The owner submit a complete Site Plan Control Approval application to the City for the proposed interim Car Rental Agency use and ancillary paid parking lot use, pursuant to Section 41 of the Planning Act.
2. The owner receives Site Plan Control Approval for the proposed interim Car Rental Agency use and ancillary paid parking lot use, pursuant to Section 41 of the Planning Act.

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