



**STAFF REPORT
ACTION REQUIRED**

**170 and 194 Evans Avenue – Ontario Municipal Board Appeal
– Request for Direction Report**

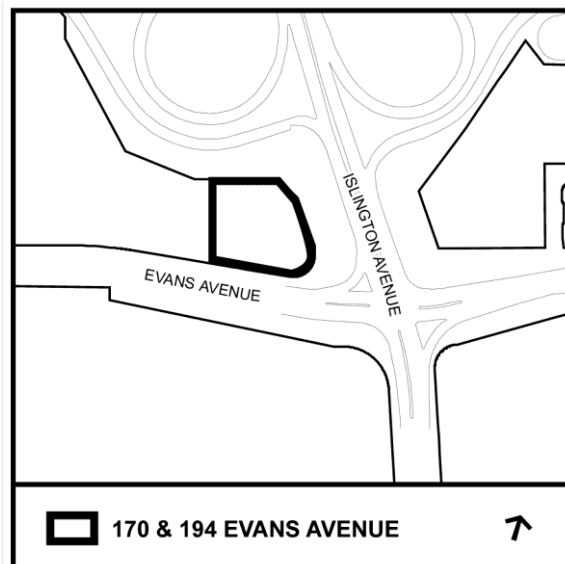
Date:	December 23, 2015
To:	Planning and Growth Management Committee
From:	Chief Planner and Executive Director, City Planning Division
Wards:	Ward 6 – Etobicoke Lakeshore
Reference Number:	P:\2016\Cluster B\PLN\PGMC\PG16005

SUMMARY

At its meeting on September 30, October 1 and 2, 2015, City Council referred Item EY8.76 (Ontario Municipal Board – 170 and 194 Evans Avenue Minor Variance Approval) to the Chief Planner and Executive Director, City Planning and directed the Chief Planner to report to the January 20, 2016 meeting of Planning and Growth Management Committee.

170 and 194 Evans Avenue is designated *Employment Areas* and zoned for employment uses. In June 2015, the Committee of Adjustment approved an application to permit private school, day nursery and outdoor play area uses within the existing building on the site, as well as a reduced setback for parking for a period of twenty years, to June 2035.

Both City Planning and Economic Development and Culture submitted reports to the Committee of Adjustment recommending that the application be refused. Subsequent to the Committee's decision and in accordance with the standing direction (ED33.9, Recommendation No. 2) to appeal any Committee of Adjustment decision that does not conform with the Official Plan *Employment Areas* policies, the City Solicitor filed an appeal of the decision to the OMB.



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A hearing date has not yet been scheduled. On September 8, 2015, the school started its operations at the subject site. It is staff's understanding that the day nursery is not yet in operation.

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council authorize the City Solicitor to continue the City's appeal of the Etobicoke York Committee of Adjustment panel's approval of the Minor Variance application (A228/15EYK) for the lands municipally known as 170 and 194 Evans Avenue.
2. City Council authorize the City Solicitor and necessary City staff to attend the Ontario Municipal Board hearing to oppose the Minor Variance decision as approved by the Committee of Adjustment.

Financial Impact

There are no financial implications resulting from the adoption of this report.

DECISION HISTORY

On June 4, 2015, the Etobicoke York Committee of Adjustment panel approved Minor Variance application A228/15EYK for the lands municipally known as 170 and 194 Evans Avenue to permit private school, day nursery, and outdoor play area uses and a reduced parking setback for a period of twenty years, expiring on June 25, 2035.

The City Solicitor, in a letter dated June 12, 2015, appealed the Committee's decision to the Ontario Municipal Board on the grounds that the approved Minor Variances did not meet the purpose and intent of the Official Plan or the Zoning By-law in accordance with Section 45(1) of the *Planning Act*. The appeal was made under the standing direction through Council's adoption of the Deputy Mayor's Manufacturing Roundtable Summary Report (Item ED33.9), which states:

City Council provide standing direction to City Legal and appropriate City staff to appeal decisions of the Committee of Adjustment to the Ontario Municipal Board which do not conform with the Official Plan's Employment Areas policies.
(Recommendation 2)

The decision can be accessed at this link:

<http://app.toronto.ca/tmmis/viewAgendaItemDetails.do?function=getMinutesItemPreview&agendaItemId=52449>.

At its meeting on September 8, 2015, Etobicoke York Community Council recommended that City Council direct the City Solicitor to withdraw the City's appeal of the Committee of Adjustment decision (Item EY8.76). At its meeting on September 30, October 1 and 2, 2015, City Council referred EY8.76 to the Chief Planner and Executive Director, City Planning and directed the Chief Planner to report to the January 20, 2016 meeting of Planning and Growth

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Management Committee on this matter. The decision can be accessed at this link: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EY8.76>

ISSUE BACKGROUND

The school and day nursery were previously located at Kipling Grove Public School located at 19 Glen Agar Drive. The private school operator was required to find an alternate location when the Toronto District School Board deemed their property at 19 Glen Agar Drive to be a surplus school site (see Attachment 6: Relocation and Context Map). In their letter submitted to the Committee of Adjustment (received on May 25, 2015), the school's principal indicated that the school currently has over 90 students ranging from 18 months to 12 years of age. Based on a site tour of the school, it is staff's understanding that not all 90 students attend at the subject site, given that the proposed daycare/nursery services have not started. During a community meeting on January 8, 2015 attended by Planning Staff, Councillor Holyday, local residents and a representative of Phoenix Montessori School, City Planning staff noted that lands designated as *Employment Areas* in the Official Plan would not be appropriate locations to relocate Phoenix Montessori School. On September 8, 2015, the school operations commenced.

The Minor Variance application sought permission to introduce new uses on the subject site: a private school, day nursery and outdoor play area, and to permit a reduced parking setback. None of these uses are permitted by City-Wide Zoning By-law 569-2013. The private school and day nursery uses are permitted under the former Etobicoke Zoning Code, whereas the outdoor play area is not. The Minor Variance application also sought relief from the required setback for parking spaces from the rear lot line. City Planning and Economic Development and Culture staff wrote staff reports to the Committee of Adjustment recommending refusal of the variances. The reports are attached as Attachments 4 and 5, respectively, to this report.

Proposal

The applicant proposed interior alterations to the existing 3-storey office building in order to accommodate a private school and a day nursery. An outdoor play area would also be constructed to satisfy the legislative outdoor play area requirements under the *Day Nurseries Act*. The proposed uses are not permitted uses under City-wide Zoning By-law 569-2013. The private school and day nursery uses are permitted uses under the former Etobicoke Zoning Code, whereas the outdoor play area is not.

Site and Surrounding Area

The site is located on the west side of Islington Avenue, north of Evans Avenue. The site is irregular in shape and has an area of approximately 0.4 hectares. The site has vehicular access from Evans Avenue. The site currently contains a 3-storey office building which is surrounded by surface parking. The balance of the site is open space that provides a buffer to the Gardiner Expressway off-ramp at Islington Avenue.

Surrounding land uses are as follows:

North: Gardiner Expressway and the Islington Avenue off-ramp;

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South: Industrial uses, including manufacturing, warehousing and office uses across Evans Avenue;
West: Manufacturing, retail and office uses;
East: A brewery and low-rise residential across Islington Avenue.

Site Plan Control

Toronto Building staff have not accepted an application for permit for the change of use from office to private school and, therefore, have yet to determine if the proposal is subject to Site Plan Control.

Provincial Policy Statement and Provincial Plans

The Provincial Policy Statement (PPS), 2014 provides policy direction on matters of provincial interest related to land use planning and development. These policies support the goal of enhancing the quality of life for all Ontarians. Key policy objectives include: building strong, healthy communities; wise use and management of resources; and protecting public health and safety. The PPS recognizes that local context and character is important. Policies are outcome-oriented, and some policies provide flexibility in their implementation provided that provincial interests are upheld. City Council's planning decisions are required to be consistent with the PPS.

The Growth Plan for the Greater Golden Horseshoe provides a framework for managing growth in the Greater Golden Horseshoe including: directions for where and how to grow; the provision of infrastructure to support growth; and protecting natural systems and cultivating a culture of conservation. City Council's planning decisions are required by the *Planning Act*, to conform, or not conflict, with the Growth Plan for the Greater Golden Horseshoe.

Official Plan

The Official Plan designates the site as *Employment Areas* on Land Use Plan Map 15 (Attachment 1). The site is identified within an Employment District on the Urban Structure Map 2. *Employment Areas* are places of business and economic activity. Uses that support this function consist of: offices, manufacturing, warehousing, distribution, research and development facilities, utilities, media facilities, parks, hotels, retail outlets ancillary to these uses, and restaurants and small scale stores and services that serve area businesses and workers.

Official Plan Amendment 231 (OPA 231)

OPA 231 was adopted by City Council on December 18, 2013 and contains new economic policies and new policies and designations for *Employment Areas* as part of the Official Plan and Municipal Comprehensive Reviews. OPA 231 was forwarded to the Minister of Municipal Affairs and Housing for approval on January 2, 2014 and on July 9, 2014, the Ministry issued a Notice of Decision approving OPA 231 with modifications, none of which directly affect the subject site. OPA 231 was appealed to the Ontario Municipal Board on behalf of numerous parties. The owner of the subject did not appeal OPA 231. On June 22, 2015, the OMB issued an order partially approving OPA 231. The partial approval brings

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into effect the redesignation of sites from *Employment Areas* to other land use designations, as well as a number of Official Plan policies.

Under OPA 231, the subject site is designated *Core Employment Areas*, which would not provide for the proposed private school, day nursery and outdoor play area uses. Although a majority of the policies contained in OPA 231, along with the land use designations, are under appeal, they are illustrative of Council's adopted policy direction for *Employment Areas*.

Zoning

The subject site is zoned Class 1 Industrial (I.C1) under the former Etobicoke Zoning Code (Attachment 2). The I.C1 zoning permits a wide variety of uses including: food service, business, manufacturing, vehicle-related uses, educational/research, medical, institutional, commercial/recreational, retail, storage (indoor and outdoor). The proposed outdoor play area is not a permitted use under the former City of Etobicoke Zoning Code.

The site is zoned Employment Industrial (E) under City-wide Zoning By-law 569-2013 (Attachment 3). Similar to the Etobicoke Zoning Code, a wide variety of uses are permitted including: artist studios, industrial sales and service, manufacturing, offices, public works yard, service shop and warehouse. The proposed private school, day nursery and outdoor play area are not permitted uses under City-wide Zoning By-law 569-2013.

Stakeholder Consultation

On November 25, 2015, City Planning and Economic Development and Culture staff hosted a series of meetings with area industries and businesses whose operations could be negatively impacted by the introduction of a sensitive use on the subject property. The South Etobicoke Industrial Employers Association (SEIEA) was also present and provided input. SEIEA is an incorporated association that was formed to serve as a collective body and voice to a group of manufacturers in the South Etobicoke area. Several of these industries have Environmental Compliance Approval (ECA's) from the Ministry of Environment and Climate Change (MOECC). ECA's may be required if there is a release of pollutants into the air, land or water. ECA's seek to regulate industry in a way that will protect the environment. Representatives from these industries and SEIEA raised a number of concerns, including, but not limited to:

- Complaints to the MOECC from the school representatives and parents may impact MOECC existing Certificate of Approvals. These Certificates are required as a condition of operation and additional mitigation at the source of the odour noise or vibration may create an additional financial burden on these businesses. Further, in certain instances businesses have been unable to adequately mitigate when faced with a nearby sensitive use and have been forced to relocate;
- The existence of the school and proposed day nursery may limit the ability of area businesses to expand, given stricter regulations with the introduction of a sensitive use;
- Constraints on landlords who may be seeking new business tenants to occupy industrial buildings; and
- Increased potential for traffic conflict with large shipping and delivery vehicles entering and exiting the area with students who may be walking in the area.

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COMMENTS

Land Use

The PPS, 2014 and Growth Plan for the Greater Golden Horseshoe contain policies for employment lands, which are defined as areas designated in an Official Plan for clusters of business and economic activities including, but not limited to, manufacturing, warehousing, offices, and associated retail and ancillary facilities. Permitting a private school, day nursery and outdoor play area on the subject site would not be consistent with the PPS, 2014 and would not conform with the Growth Plan.

The Official Plan policies are intended to provide locations in the City for employment uses to thrive. To support this, the Official Plan prohibits uses that detract from the economic function of lands designated *Employment Areas*. The presence of sensitive uses in *Employment Areas* can adversely affect, or be affected by, businesses by way of their traffic, odour emissions or noise generated. Schools and day nurseries draw large numbers of students from a broad catchment area and can have impacts on local goods movement into and out of the *Employment Area*. It is also staff's opinion that a change in use of this nature is not an appropriate matter for a Committee of Adjustment Minor Variance application.

Transportation Impacts

Applications to change use permissions are typically done by way of a Zoning By-law Amendment. Through this comprehensive review process an applicant would be required to submit a transportation impact study to identify the impacts on the existing transportation network that the proposed uses may generate. Staff have not been provided sufficient transportation data from the applicant to adequately address the traffic demands generated by the proposed uses or any mitigation measures that would be appropriate to support the uses, including transportation demand management measures that are normally implemented with schools and day nurseries.

Noise and Air Quality Impacts

On December 3, 2015, the applicant submitted an Environmental Noise and Air Quality Feasibility Assessment (dated September 3, 2015) in support of the Minor Variance application. When such studies are submitted to the City for review, applicants typically agree to pay the costs associated with third party peer review in order for staff to receive an impartial and objective professional opinion on the assumptions made, method applied and conclusions reached. To date, the applicant has not agreed to pay the costs associated with a third party peer review. As such, City staff do not have sufficient information on the potential impacts that area industries may have on the introduction of the proposed sensitive uses at the subject property.

Toronto Building Division Comment

The applicant's proposed interior alterations and change of use to the existing 3-storey office building are regulated by the *Ontario Building Code* (OBC) and permits are required. A Record of Site Condition is also required under the *Environmental Protection Act*, given the proposed change from a commercial use to an institutional use.

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On September 24, 2015, the applicant submitted an application to the Building Department to permit the installation of a fire alarm system. A permit is also required for the change of use of the space from office to a private school and day nursery.

Both the *Environmental Protection Act* and the Zoning By-law are applicable law for the purposes of issuing a building permit. Neither of the required permits can be issued unless the use is permitted under the Zoning By-law and a RSC has been filed with the Ministry of the Environment and Climate Change. To date, the City has not received confirmation of the filing of a Record of Site Condition (RSC) from the applicant. Compliance with the Zoning By-law is dependent upon the OMB decision.

Conclusion

This report sets out the reasons for staff's recommendations to the Committee of Adjustment to refuse the application to introduce sensitive uses on the subject site, and recommends that City's appeal be upheld. It is staff's opinion that City Council should authorize the City Solicitor to continue the City's appeal of the Etobicoke York Committee of Adjustment panel's approval of the Minor Variance application (A228/15EYK) for the lands municipally known as 170 and 194 Evans Avenue.

CONTACT

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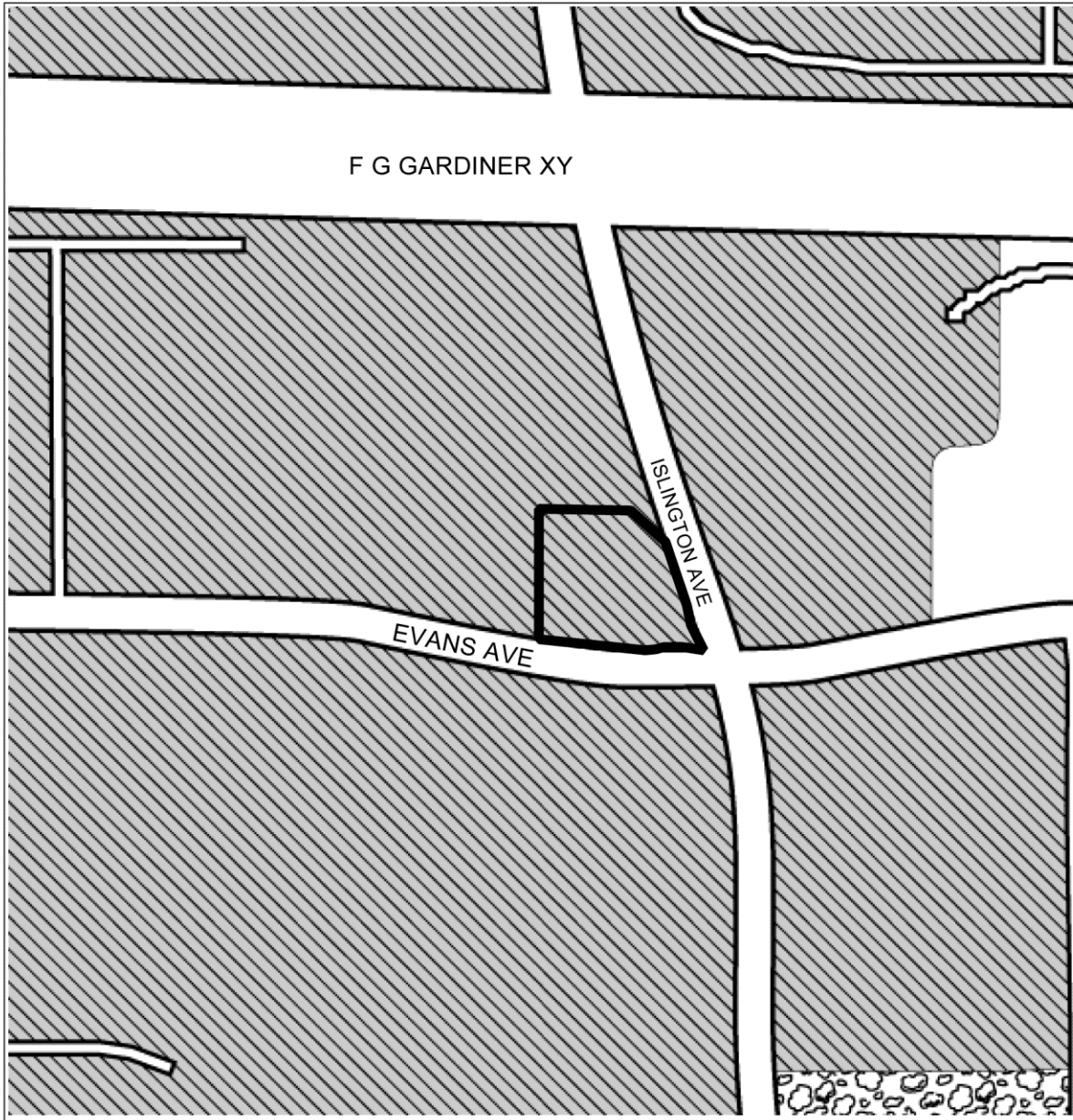
SIGNATURE

Jennifer Keesmaat, MES, MCIP, RPP
Chief Planner and Executive Director
City Planning Division

ATTACHMENTS

- Attachment 1: Official Plan
- Attachment 2: Former City of Etobicoke Zoning Code
- Attachment 3: City-Wide Zoning By-law 569-2013
- Attachment 4: City Planning Report to the Committee of Adjustment (May 22, 2015)
- Attachment 5: Economic Development and Culture Report to the Committee of Adjustment (June 3, 2015)
- Attachment 6: Relocation and Context Map






Attachment 1: Official Plan



TORONTO City Planning
Official Plan

170 & 194 Evans Avenue

File # A228/15EYK

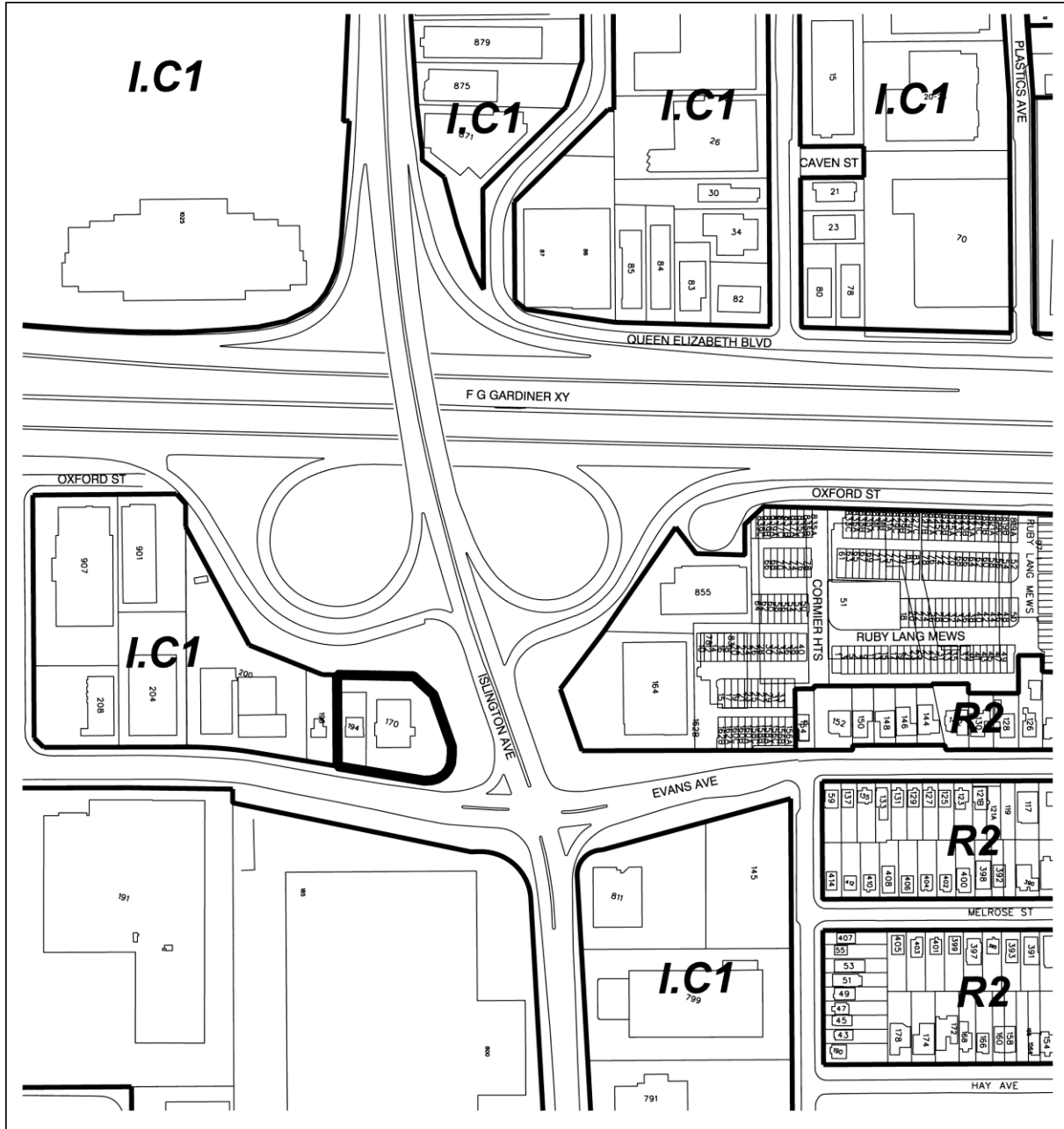
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|--|--|
|  Site Location |  Parks & Open Space Areas |
|  Neighbourhoods |  Parks |
|  Employment Areas | |



Not to Scale
12/18/2015

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Attachment 2: Former City of Etobicoke Zoning Code



170 & 194 Evans Avenue
File # A228/15EYK

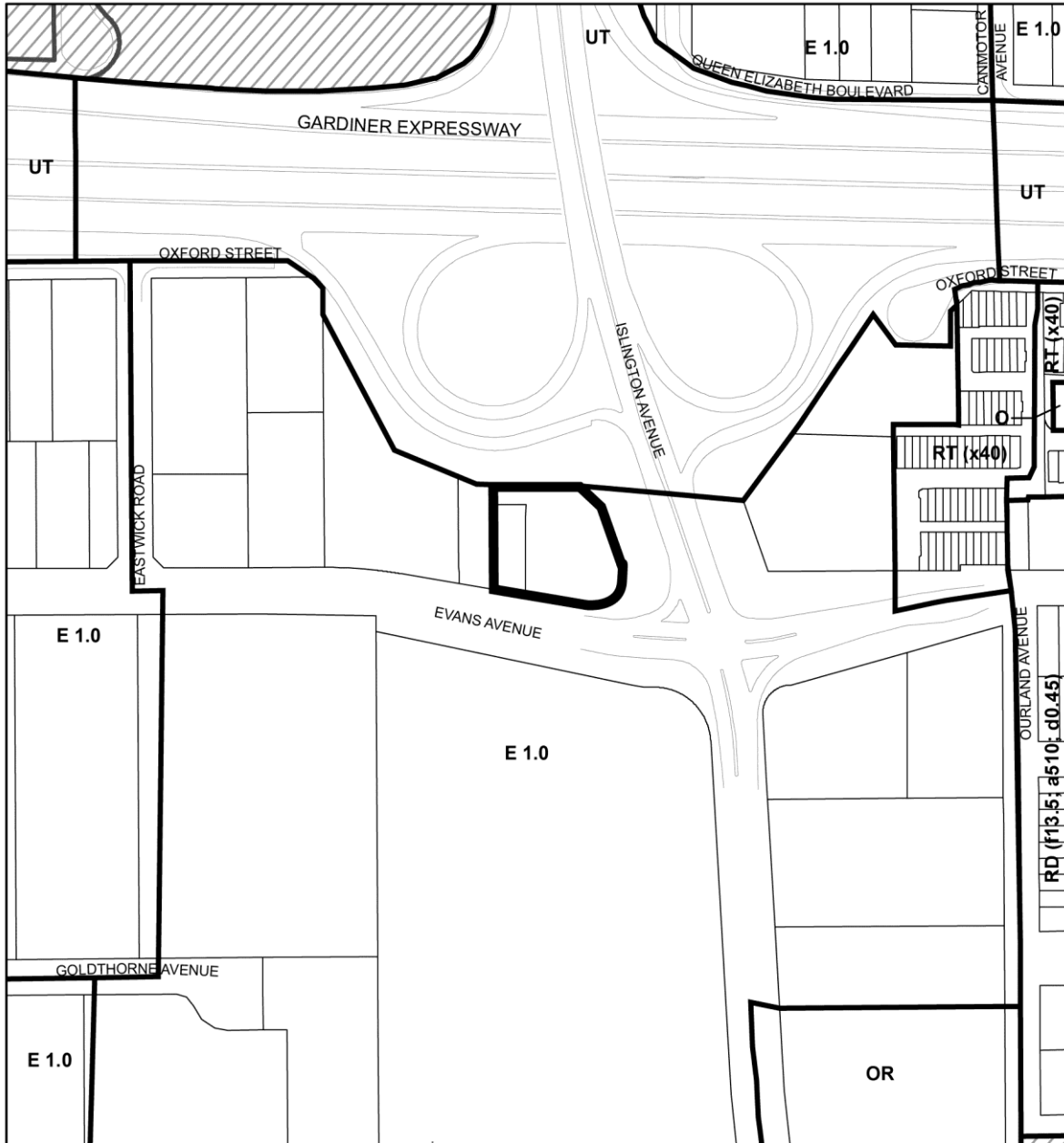
R2 Residential Second Density
I.C1 Industrial Class 1



Not to Scale
Zoning By-law 11,737 as amended
Extracted 12/18/2015

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Attachment 3: City-Wide Zoning By-law 569-2013



170 & 194 Evans Avenue Address

Zoning By-Law No. 569-2013

File # A228/15EYK

Location of Application

See Former City of Etobicoke By-Law No. 11,737
I.C1 Industrial Class 1

- | | | | |
|----|-----------------------|----|----------------------------|
| RD | Residential Detached | O | Open Space |
| RT | Residential Townhouse | OR | Open Space Recreation |
| E | Employment Industrial | UT | Utility and Transportation |



Not to Scale
Extracted: 12/18/2015

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Attachment 4: City Planning Report to the Committee of Adjustment (May 22, 2015)



STAFF REPORT
Committee of Adjustment
Application

Date:	Friday, May 22, 2015
To:	Chair and Committee Members of the Committee of Adjustment Etobicoke York Panel
From:	Director, Community Planning, Etobicoke York District
Wards:	Ward 6
Reference:	File No. A228/15EYK Address: 170 and 194 Evans Avenue Application to be heard: Thursday, June 4, 2015

RECOMMENDATION

Planning staff recommend that the application be refused.

APPLICATION

The application is to convert the existing office building into a Montessori/Private School (with childcare and elementary education services) through interior alterations and to construct an outdoor play area.

The following variances are being requested:

- 1. Section 60.20.20.10.(1), By-law 569-2013**
The proposed "Private School, Day Nursery and Outdoor Play Area" uses (childcare and elementary education services) are not a permitted use in an E1.0 zone.
- 2. Section 304-33**
Outdoor Play Area is not a permitted use in an I.C1 zone.
- 3. Section 60.20.80.20(1), By-law 569-2013**
A parking space is required to be located a minimum of 0.5 m from lot line.
The parking spaces in the rear yard will be located 0 m from the rear lot lines.

COMMENTS

The Toronto Official Plan designates the site as *Employment Areas*. The site is zoned Class 1 Industrial (I.C1), under the former City of Etobicoke Zoning Code and Employment Industrial (E) under City-wide Zoning By-law No. 569-2013.

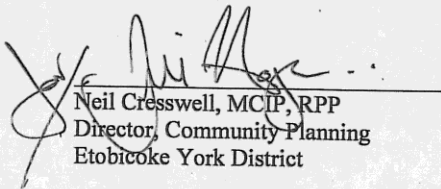
City Planning staff has reviewed the application and supporting materials and conducted a site visit. Based on this review, staff identified a concern with the proposed variance to permit a private school, a day nursery, and an outdoor play area. These uses are not permitted in an E zone. It is staff's opinion that the proposed uses would not be compatible with surrounding uses, which include warehousing, auto repair, and small-scale manufacturing.

Toronto City Council adopted Official Plan Amendment (OPA) No. 231 in 2013 and it contains new policies and designations for Employment Areas. OPA No. 231 designates the subject site 'Core Employment Areas'. Uses permitted in Core Employment Areas are manufacturing, warehousing, wholesaling, transportation facilities, offices, research and development facilities, utilities, industrial trade schools, media facilities, and vertical agriculture. Core Employment Areas are not intended for sensitive land uses such as schools and day nurseries.

The proposed development would not be in keeping with the intent and purpose of the Official Plan or City-wide Zoning By-law No. 569-2013, nor can it be considered desirable for the use of the land, and therefore it is recommended that the application be refused.

CONTACT

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Neil Cresswell, MCIP, RPP
Director, Community Planning
Etobicoke York District

Attachment 5: Economic Development & Culture Report to the Committee of Adjustment (June 3, 2015)



Rebecca Condon, MCIF, RPP
Senior Business Development
Officer

Economic Development & Culture
Business Services
Business Retention and Expansion

77 Elizabeth Street
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Email: rcondon@toronto.ca

June 3, 2015

Susanne Pringle, Manager & Deputy Secretary Treasurer
Committee of Adjustment
Etobicoke Civic Centre
399 The West Mall
Toronto ON M9C 2Y2

Re: EDC-Business Growth Services Comments - A228/15EYK -170 and 194 Evans Avenue

Committee of Adjustment Members:

EDC-Business Growth Services-Business Retention & Expansion has the following comments on the Zoning By-law Variance Application for 170 and 194 Evans Avenue submitted by MacNaughton Hermes Britton Clarkson Planning Ltd on behalf of 851653 Ontario Inc.

The site is located in an Employment District as shown on the Official Plan Urban Structure Map 2 and is in an Employment Area as shown on Land Use Map 15. The site is zoned Class I Industrial (IC 1) under the former City of Etobicoke Zoning Code and Employment (E) under City-Wide Zoning By-law No. 569-2013.

The applicant intends to convert the existing office building into a Montessori/Private School (with childcare and elementary education services) through interior alterations and to construct an outdoor play area.

The applicant is requesting the following variances:

- Section 60.20.20.10.(1), By-law 569-2013**
The proposed "Private School, Day Nursery and Outdoor Play Area" uses (childcare and elementary education services) are not a permitted use in an E1.0 zone.
- Section 304-33**
Outdoor Play Area is not a permitted use in an IC1 zone.
- Section 60.20.80.20(1), By-law 569-2013**
A parking space is required to be located a minimum of 0.5 m from lot line.
The parking spaces in the rear yard will be located 0 m from the rear lot lines.

A childcare and elementary education service is considered a sensitive use by the Ontario Ministry of the Environment and Climate Change (MoECC). Locating this type of use in an Employment District may initiate noise and odour complaints against its business neighbors. Traffic and parking complaints may also become a concern.

EDC -Business Growth Services has the following comments about the variance application to permit a childcare and elementary education service:

- The location of sensitive uses may influence location decisions for businesses considering operating within an employment area. These sensitive uses may cause businesses to seek alternative locations to avoid land use conflicts. Approval of sensitive uses may act to destabilize an employment area.
- The proximity of sensitive uses may impact the Environmental Compliance Approvals required by the Ministry of the Environment and Climate Change for certain types of businesses. These Certificates may require costly measures to mitigate adverse impacts. Sensitive uses in an employment area sends a signal that this is not a location conducive to all types of businesses as permitted by the in force zoning.
- Employment areas are designated for the location of businesses outlined by the in force zoning. When sensitive uses are permitted it removes property that would otherwise be available for those businesses to locate. It is important for the City's future prosperity and economic development that there is a large and diverse pool of sites and buildings in many locations available for businesses to operate throughout the City of Toronto.

EDC believes that the approval of these variances may be detrimental to the viability of existing area businesses and may impact the future development of the Employment District/Area for the employment uses as intended by the Official Plan and the in force zoning.

This is an Employment District and Area designated for employment uses. Approval of a childcare and elementary education service is not appropriate for this area. This use may create land use conflicts with existing and future business uses and would reduce the overall land supply for those employment uses.

The variance requests are neither minor nor desirable.

Thank you for your consideration.

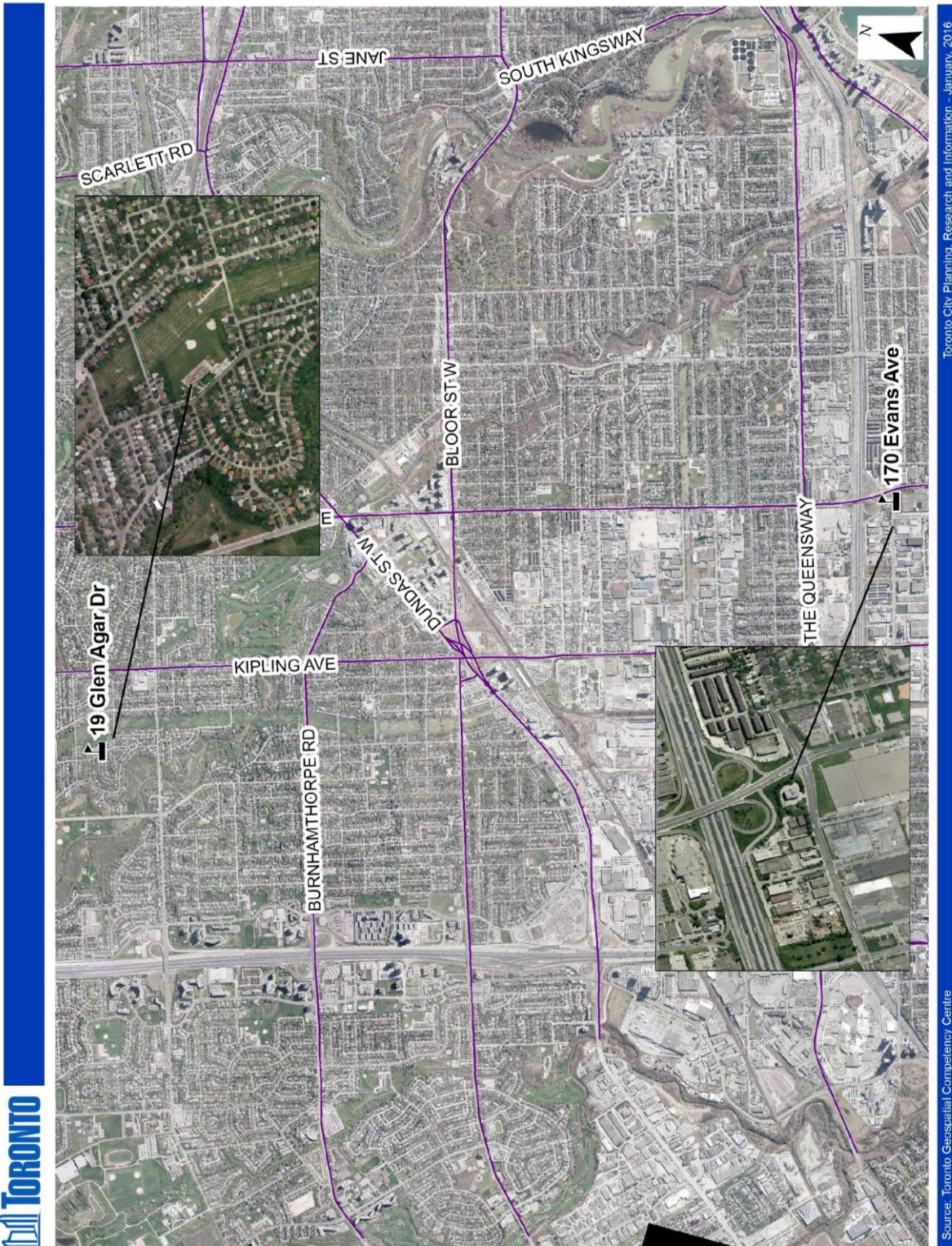
Sincerely,



Rebecca Condon, MCIP, RPP
Senior Business Development Officer

Cc: George Spezza-Director, Business Growth Services
John Alderdice-Manager, Business Retention & Expansion

Attachment 6: Relocation and Context Map



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