

DECISION AND ORDER

Decision Issue Date Friday, November 24, 2017

PROCEEDING COMMENCED UNDER subsection 45 (1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): CITY OF TORONTO

Applicant: ALEX BOROS

Property Address/Description: 380 BIRCHMOUNT RD

Committee of Adjustment Case File Number: 16 184708 ESC 35 MV

TLAB Case File Number: 17 198730 S45 35 TLAB

Hearing date: Wednesday, November 08, 2017

DECISION DELIVERED BY G. Burton

Parties

Counsel

City of Toronto

Mark Crawford

Matt Schuman

Abdulhai Chhiboo

Alex Boros, Agent

INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (TLAB) by the City of Toronto from a decision of the Committee of Adjustment (COA), Scarborough Panel, that approved the use of a Banquet Hall and a Catering Facility at 380 Birchmount Rd. (the 'subject property'). The applicable official plans and zoning by-laws do not permit these uses on the property. The COA imposed the condition that its approval was valid for five years after the date that its decision becomes final and binding.

BACKGROUND

The subject property is located on the west side of Birchmount Rd., at the northwest corner of Mann Avenue. It is in the Oakridge Employment Area, and is designated “Core Employment Areas” in the recently approved Official Plan (OP). There are several industrial uses in the front portion of the one-story building, and the use that is challenged, called the Grand Palace Convention Centre, is located in the rear portion of the building. The property is surrounded by employment uses.

It is in an area zoned Industrial (M) under a by-law entitled Employment Districts Zoning By-law No. 24982 (as am.) and Employment Industrial (E) under the recent comprehensive Zoning By-law No. 569-2013 (as am., not yet in force.)

The COA granted this variance, with the above-noted condition, to last five years:

By-law No. 569-2013 & By-law No. 24982:

- 1) To permit the following uses in addition to the uses permitted by the zoning by-law:
- Banquet Hall
 - Catering Facility

Whereas the zoning by-law does not permit these uses on the property.

MATTERS IN ISSUE

The City is of the view that the banquet hall use detracts from the designated and zoned purpose of the employment area in which is located. The operator and co-owner of the banquet hall and catering business, Mr. Robb Chowdhury, takes the position that his six-year operation on the site is well supported by its patrons, and creates no interference for the nearby employment or industrial uses.

JURISDICTION

For variance appeals, the TLAB must ensure that the variances sought meet the tests in subsection 45(1) of the Act. This involves a reconsideration of the variances considered by the Committee in the physical and planning context. The subsection requires a conclusion that each of the variances:

- is desirable for the appropriate development or use of the land, building or structure;
- maintains the general intent and purpose of the official plan;
- maintains the general intent and purpose of the zoning by-law; and
- is minor.

These are usually expressed as the “four tests”, and all must be satisfied for each variance.

In addition, TLAB must have regard to matters of provincial interest as set out in section 2 of the Act, and the variances must be consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement (‘PPS’) and conform to (or not

conflict with) any provincial plan such as the Growth Plan for the Greater Golden Horseshoe ('Growth Plan') for the subject area.

Under s. 2.1 (1) of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

EVIDENCE

Prior to the evidence, Mr. Crawford made several objections about failure to prefile documents as required under the TLAB Rules of Practice and Procedure. There was no timely election of party status, notice of a representative, document disclosure, and no expert witness statement. I ruled that although filing did not occur at the times required by TLAB Rules, there was no real surprise or prejudice to the City in the failure to file party status, or as representative, or even to disclose documents on time. They were aware of the operator's interest and arguments from the Committee hearing. Document disclosure was indeed 42 days late, but Mr. Boros explained that he was unsure of whether the appeal would proceed, as there were ongoing settlement discussions.

The more serious non-compliance was in his witness statement, in which it seemed that Mr. Boros intended to provide expert opinion evidence as well as act as agent. Mr. Crawford argued that without providing evidence of his qualifications and a signed acknowledgement of an expert's duty to give independent evidence, he could not do so. Mr. Boros was therefore instructed to provide only factual evidence, and he did so.

Mr. Chowdhury testified that he operates a banquet hall and catering facilities for various events from rented premises at the rear levels of the subject property. It is almost exclusively a weekend activity, occasionally with an event on Friday, with an average of two or three a month. It consists of food preparation and service to about 100 – 200 persons on average, mainly from the Bangladeshi community. He had rented the premises for events that he managed even prior to leasing it formally in 2012 (Exhibit 1). It had already been in operation under another name, probably since 2008. Renovations to the premises were undertaken for kitchen and HVAC purposes, without permits, when he took over the second floor in 2015. The City issued a Notice of Violation to the landlord in April 2016 (Ex. 4, Vol. 1, p. 33). He assumed that the owner of the building applied for the permits and selected appropriate workers in complying with the orders. However, no permit could be obtained then because of the zoning non-compliance. There was then an Order to Comply issued April 17, 2017, and an application for a variance was made.

He employs four persons full time and 14 or 15 part time. He has about 120 parking spaces available for the use, and an additional few at the business across Mack Street on weekends. The industrial uses in the rest of the building use the parking to the north side of the building, behind a fence for which he has the key and weekend use. Traffic on Birchmount and Mack is very light on weekends. About 1000 persons did attend an event in August this year, held in the parking lot, and there might be three of these events held by outside groups per year. There are never more than 700 persons for events internal to the two floors. City health and fire inspectors have visited, as early as 2014/15. Health inspectors issued notices to comply, but these have been quickly

**Decision of Toronto Local Appeal Body Panel Member: G. Burton
TLAB Case File Number: 17 198730 S45 35 TLAB**

satisfied. No complaints have been made about his operations, in fact he has received several commendations from the community (Exhibit 2.)

He applied for the variance now requested after there had been a complaint about his operation from a competitor, and the City then notified him of non-compliance with the zoning by-laws. He stated that there is a need for this operation in its current location, and that it would be ruinous for him to have to cease operations here and to move. In redirect he stated that he could not even move to the front of the building on Birchmount, although that would probably make the use legal as it is an arterial street where such uses are allowed. He cannot afford the necessary renovations.

In cross examination, he admitted not having had a lawyer or real estate agent review the lease agreement in 2012 prior to signing it. He assumed that there was no issue with the use, as there had been a similar one located in the building for several years prior to his lease. He was taken in cross examination through aspects of the site which were detrimental - impaired views for cars or pedestrians, lack of sidewalks, and lack of street parking or even stopping on Birchmount.

Mr. Boros provided evidence of his contention that a Banquet Hall, as a permitted use under By-law 24982, was therefore a legal use when it was commenced. It is zoned Industrial (M) under the Employment Districts Zoning By-law No. 24982 (as am.). By clause VI, section 7.4, a restaurant is a permitted use, and the definition of restaurant says that it "...shall include a banquet hall." He argued that it was a legal use in 2010 or earlier when it began.

Under comprehensive Zoning By-law No. 569-2013 (as am., not yet in force) the property is zoned (E) or Employment Industrial. One of the permitted uses is an "eating establishment" (3.19.30), but there is no reference to nor a definition of a restaurant. In Mr. Boros' opinion, there is no reason why an "eating establishment" would not include a "restaurant".

Therefore his testimony was that a banquet hall is a restaurant, and thus is an eating establishment, and is permitted on this site. He argued that it is a non-conforming use, and protected by the Act as such.

Mr. Crawford pointed out that under the new By-law (not yet in force), a "place of assembly" specifically includes a banquet hall, and that this use is not permitted at the subject site. He took Mr. Boros to the text of Clause VI of the existing Employment Area By-law 24982, and Mr. Boros agreed that the zone provisions in section 7 on which he relied to support his contention had no application. The applicable section is section 1, "Industrial Zone" (M), and not section 7, which applies only to the Industrial Commercial (MC) zone. In the M zone a restaurant is not a permitted use, and was not even when the use began. This By-law was enacted by Scarborough in approximately 1996, pre-amalgamation, and thus the banquet hall use would not have been allowed on this site in 2007, approximately when it was created.

The City's planning evidence was provided by Mr. Tom Schwerdtfeger, who was qualified as an expert in the field, including significant experience in Alberta. He now has responsibility for the Scarborough district, and has been involved in this file since

August. In his opinion, approval of the banquet hall use would be an undesirable infiltration of a sensitive, non-employment use into an established employment area. Problems that could arise include interference with the movement of goods, safety hazards, conflict between patrons and trucking activity, costs for industrial users and decisions by certain industries not to locate nearby. He explained that industrial uses require buffering from so-called sensitive uses, that is, ones that might complain about industrial emanations. Offending industries might incur mitigation expenditures. To prevent the problems of pollution, noise, vibration, dust, etc., from creating costs for industries for prevention techniques, they must locate at appropriate distances from uses that might be affected by such problems. The opposite is also true.

Provincial Policies:

Mr. Schwerdtfeger gave an outline of the requirements in Ontario to maintain segregation of uses. In 1995 the Ministry of the Environment produced D6 Guidelines to identify classes of industries that require certification to ensure mitigation for sensitive uses. Such uses are defined in section 1.2.1 as “any building or associated amenity area (i.e., may be indoor or outdoor space) which is not directly associated with the industrial use, where humans or the natural environment may be adversely affected by emissions generated by the operation of a nearby industrial facility.” He stated that a banquet hall is deemed to be a recreational use by the City, and thus is a sensitive use.

He illustrated the area around the subject property by means of photos. The site is surrounded by light industrial uses. Mack Ave. has no sidewalks. The entrance to the business is visually difficult because of its location on a side street, and the presence of a hydro substation and hydrant close by. Parking is not permitted on Birchmount or Mack. The business across on Mack limits visitor parking during the week.

He then outlined the planning instruments that regulate separation distances. As mentioned, the Planning Act requires that TLAB have regard to matters of provincial interest as set out in section 2 of the Act. Clauses k) and l) of section 2 are: (k) the adequate provision of employment opportunities; and (l) the protection of the financial and economic well-being of the Province and its municipalities. These requirements apply to this matter.

In 2006, Bill 51 (Planning and Conservation Land Statute Amendment Act, 2006) amended the Planning Act to add definitions for “area of employment”:

“area of employment” means an area of land designated in an official plan for clusters of business and economic uses including, without limitation, the uses listed in subsection (5),

Subsection (5) states:

- (5) The uses referred to in the definition of “area of employment” in subsection (1) are,
- (a) manufacturing uses;
 - (b) warehousing uses;
 - (c) office uses;

Decision of Toronto Local Appeal Body Panel Member: G. Burton
TLAB Case File Number: 17 198730 S45 35 TLAB

- (d) retail uses that are associated with uses mentioned in clauses (a) to (c); and
- (e) facilities that are ancillary to uses mentioned in clauses (a) to (d).

Mr. Schwerdtfeger testified that a banquet hall is not an employment use as defined, even though it does employ people.

The current Provincial Policy Statement (PPS) was adopted in 2014. The definition of “employment area” is consistent with the Planning Act. It is: “Employment area”: means those 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.”

By section 1.3.2 of the PPS, planning authorities must plan for, **protect and preserve** employment areas for current and future uses, and ensure that the necessary infrastructure is provided to support current and projected needs (emphasis added.)

Also, section 1.3.2.2 sets strict limits: it restricts conversion of lands from employment areas to non-employment uses unless there has been a comprehensive review, and only where it has been demonstrated that the land is not required for employment purposes over the long term, and (as well) that there is a **need** for the conversion. By section 4.2 of the PPS, decisions of the TLAB “shall be consistent with” its policies.

In 2015, Bill 73 was enacted (Smart Growth for our Communities Act, 2015) which created a new time frame for review of official plans - 10 years after the in-force date, rather than every five years, and at five-year intervals thereafter. The City had adopted OPA 231 in 2013, after a review. While this amendment is partially under appeal and thus is not yet fully in force, the proposed use does not conform to the Core Employment Areas policies of OPA 231 (see below.)

City of Toronto Official Plan

Policies in the Official Plan support this view of protection and separation. OPA 231 has been appealed to the OMB. The subject lands have not been specifically appealed. However, on December 20, 2016, the OMB issued an order approving additional portions of non-policy text, policies and mapping of OPA 231. Two new land use designations resulted from this amendment: Core Employment Area, and General Employment Area (shown on Map 38 of OPA 231.) This property is now designated as “Core Employment Area”. (CE).

The approval included bringing into effect the Core Employment Area and General Employment Area land use designations and mapping (Map 2, Urban Structure, and Map 22, Land Use). Mr. Schwerdtfeger testified that while not in force at the time of the application, the approved policies are relevant, although not determinative of this case.

Revised section 4.6.1 of the Plan now emphasizes that only small restaurant uses are permitted in Employment areas, those that are ancillary to the primary industrial use. Section 4.6.1 states:

“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 the preceding uses, and restaurants and small scale stores and services that serve area businesses and workers.**" (emphasis added.)

Section 2.2.4 of the Plan deals with Employment Districts, illustrated on Map 2 (p. 558). The purple section there corresponds with the former Oakridge Employment Area, and the subject property is at its centre (Map 21.) Chapter 3 deals with the Growth Strategy, and section 3.5.1 reinforces the need to protect employment districts for a wide range of activities in the appropriate locations.

By 4.6.2, incompatible uses that do not support the main industrial uses may locate only on arterial streets. While Birchmount is such a street, the banquet hall business is located on Mack Ave. and not Birchmount. Existing non-conforming uses were protected in the 2006 OP amendments, but this business was not in existence at that time.

4.6.6 of the OP provides criteria for development in employment areas. These are the relevant portions:

"6. Development will contribute to the creation of competitive, attractive, highly functional *Employment Areas* by:

- a) supporting the economic function of the *Employment Areas* and the amenity of adjacent areas;
- b) encouraging the establishment of key clusters of economic activity with significant value-added employment and assessment;
- c) avoiding excessive car and truck traffic on the road system within *Employment Areas* and adjacent areas;
- d) providing adequate parking and loading on-site;
- e) sharing driveways and parking areas wherever possible;
- f) mitigating the effects of noise, vibration, dust, odours or particulate matter that will be detrimental to other businesses or the amenity of neighbouring areas;..."

The preamble to section 4.6 states: "Uses that would attract the general public into the interior of employment lands and possibly disrupt industrial operations are generally not permitted in Core Employment Areas." Mr. Schwerdtfeger's opinion was that the large crowds attracted to the subject site, with the attendant traffic, do not support the economic function of the employment area. The use is not in compliance with the OP.

Zoning By-laws

Respecting the zoning, Mr. Schwerdtfeger outlined the complicated history of the Scarborough Employment Lands zoning by-laws. This site is covered by the "old" Zoning By-law 24982, and is zoned Industrial ("M") therein. A banquet hall was a permitted use: "...land, buildings or structures or parts thereof used for a place of assembly for the purpose of consumption of food or beverages and also shall include

banquet halls.” However, under the new 2013 comprehensive By-law, the property is zoned Employment Industrial (E). The relevant provisions permit a range of manufacturing, warehousing, service, office and commercial uses. This By-law includes a banquet hall in the definition of “place of assembly”. The latter use does not appear in the permitted uses for this zone, so a banquet hall is not a permitted use on this site (although the By-law remains under appeal). In addition, a small portion of the western part of the site is zoned EH, or Heavy Industrial, making the separation of uses even more important.

He stated that the intent and purpose of the Zoning By-laws is to implement the Official Plan, which in this case is to permit only uses that are supportive of the employment function of the area. The proposed use does not meet this Intent, and could detract from this function.

Mr. Boros asked in cross what the relative size of the operation is, compared to the whole of the area designated Core Employment Area in which it is located. Mr. Schwerdtfeger responded that although it may be small in relative square footage, this measure does not address the possible impact. He also pointed out that operations of nearby businesses might well extend to other days of the week than at present, as could the banquet hall.

The four tests

In Mr. Schwerdtfeger’s opinion, the general intent and purpose of the Official plan policies are not met in this application. Employment Areas are a protected and scarce resource, vital to the City's economic future. The banquet hall use, with its many customers, does not directly support the employment designation. It does not front on a major street, and so fall within this exception. Traffic and parking generated could have an impact on the movement of goods and employees, and create safety concerns between the facility and freight movements. Although the applicable designation as Core Employment Areas was not yet in force when the application was made, the intended employment function of the lands and its location within an employment area makes it clear that the proposed banquet hall does not meet the intent of either the former Plan provisions or of OPA 231.

Nor does it meet the General Intent and purpose of the Zoning By-laws, in his view. He also is of the opinion that the requested variance to permit a banquet hall is not a minor departure from the intended use of the subject lands. The potential impact of the banquet hall on nearby employment uses is of significant concern. When the capacity is 700 or more, the public is attracted and potentially disrupts the employment uses. There could also be hazards to banquet hall patrons due to the lack of pedestrian amenities, and the truck and tractor-trailer traffic that utilizes Birchmount and Mack Avenue to access nearby employment uses.

Finally, in his professional opinion a banquet hall does not represent desirable and appropriate development of the subject lands. An incompatible and sensitive use within an employment area can have a destabilizing effect. Employers may choose to locate elsewhere in order to avoid land use conflicts and secure a better operating

environment. The potential economic impact of the continued operation of an incompatible use does not represent good planning and is not in the public interest.

Economic Development and Culture

The City of Toronto also called Ms. Rebecca Condon, Senior Business Development Officer, Economic Development and Culture Division, Business Retention and Expansion Unit, to support its views. She is an extremely well qualified economist and land use planner. Her unit's purpose is to expand the capacity of existing businesses and to attract new businesses to the City. She has input into OP and zoning initiatives to support both development and retention of employment lands.

The Division issued a policy document approved by Council entitled Collaborating for Competitiveness (2013), or "C4C", that directs its activities. The Division is to ensure an adequate supply of land to accommodate employment growth forecasts, and to increase the tax base. Planning instruments are to be reviewed to accelerate this growth, and to create permanent jobs. The Division also is to assist Toronto manufacturers with municipal approvals and those at other levels of government.

Ms. Condon has been familiar with this location and site for many years, and has reviewed the land use plans, the employment data and the growth expectations for the area. Because employment lands are a limited resource, she would resist the pressures for zoning changes which would detract from the designated uses. In the review conducted prior to OPA 231, this finite supply was observed to be further reduced. The new designation of "Core Employment Areas" was designed to direct the heavier industrial uses to specific areas (leaving the "General Employment Areas" for the lighter, small-scale ancillary uses.) There is a significant concern with encroachment of sensitive uses such as the banquet hall use, as they are seen to pose threats to the location and retention of the industrial uses.

Ms. Condon provided statistics to back up this opinion. 80% of manufacturing uses are in designated Employment areas, and these account for 93% of all the manufacturing jobs in Toronto. If lost to encroachments by sensitive uses there will be a lasting impact on the economy. Employment uses are threatened because sensitive uses may complain of factors such as noise, vibration, traffic and odours. Uses such as banquet halls, places of worship, and recreational activities are attracted to existing larger, high-ceilinged factory buildings in industrial areas. However, if these are permitted to locate there, there is a cascading effect on conversions, and the desired employment lands are lost. A banquet hall use with undesirable traffic and parking, and attendance of 1000 or more in the parking area, might well discourage industries from locating nearby. In addition, attendees may complain about manufacturing activities, leading to the need for mitigation. The D6 Guidelines mentioned by Mr. Schwerdtfeger posit an area of influence of 1000 metres, such that a sensitive use should maintain a significant separation distance to avoid industries being forced to move or mitigate.

While manufacturing jobs have decreased over many decades, statistics about employment growth for this designated area can be seen in the annual survey at Tabs 35 and 35 of Exhibit 9 filed by the City. There have been significant increases in both

employee and firm growth from 2012 to 2016, proving that this specific employment area is expanding and is deserving of encouragement and protection. Lands for commercial/industrial uses are in short supply in this area of Scarborough, as seen in Colliers Availability Report for the last quarters – Exhibit 9, Tab 36, p. 985. These figures address what properties are anticipated to be available in the short term. This availability diminished from 1.8 % in the first quarter of this year, to 1.4 % in the next. Real estate listings in this area of Scarborough are more competitive than in any other area of the City.

Ms. Condon also referred to the sections of the OP that reinforce employment uses. Section 4.6, Policy 1 restricts retail and service uses in CE designations to those that support manufacturing, such as coffee shops, printers, couriers, etc. It discourages those that attract the public separate from the industrial function.

Larger manufacturers create smaller ones through the multiplier effect, and must be encouraged. Every dollar in manufacturing creates three to five dollars in the economy through subordinate needs such as parts, maintenance, packaging and transportation. Retail and service uses produce only one to one and a half dollars in additional growth.

Ms. Condon testified that in her professional opinion the proposed use did not meet the four tests in section 45 of the Act. Her Division would support the banquet hall use if it were located in an appropriate area where it is allowed. The proper procedure in her view is by way of zoning amendment, rather than by minor variance, so that proper studies and public consultation could occur.

Mr. Boros reiterated in his cross examination that no one had complained of the use in the many years of its existence, that traffic was not impacted. Closing the business would result in a significant burden for the operators.

ANALYSIS, FINDINGS, REASONS

It can be seen from the PPS section quoted and the OP and zoning that both the province and the city take the preservation of lands for employment uses very seriously. As Mr. Crawford pointed out, there were four representatives from the City who appeared on this appeal. Toronto's employment areas allow manufacturing and other such businesses the opportunity to operate freely, and attempt to minimize potential land use conflicts with sensitive uses. Identified employment lands are finite. On the evidence, the preservation of employment lands for manufacturing uses is paramount for manufacturing success in Toronto.

All of the evidence provided by the City's expert witnesses proved that the banquet hall use is not a permitted use where it is now located. Respecting zoning by-law compliance, it appears that the use was not permitted in the Industrial Zone (M) under the Scarborough By-law even at the time when it was first established, prior to Mr. Chowdhury's use. Therefore it cannot be found to be a non-conforming use. I concur with Mr. Crawford's argument that the banquet hall use, which is open almost exclusively on weekends, cannot therefore be considered as being ancillary to or "supporting" the employment uses in the area. They are weekday operations. The

**Decision of Toronto Local Appeal Body Panel Member: G. Burton
TLAB Case File Number: 17 198730 S45 35 TLAB**

banquet hall could also be expanded in scope and operating times in the future, or encourage similar applications, in the domino effect referred to in Ms. Condon's evidence. Further, Clause VI, section 1 of the Scarborough By-law for M zones also includes the provision that "(b) All uses shall be conducted wholly within an enclosed building." The proposed banquet hall use does not comply with either part of this section, as occasionally the use extends to the parking lot.

While the new Core Employment Areas were not in force when the application for variance was made, Mr. Crawford submitted that their policies are persuasive. He offered a decision of the OMB, Dumart v. Woolwich (Township) [1997] O.M.B.D. No. 1817, 36 O.M.B.R. 165, on the question of the influence of newly enacted plans or by-laws on an application made before their passage. In paragraph 7 the Board finds that evidence of a new plan is "admissible, relevant but not determinative" (para. 6). This results from the requirement on appeal to decide whether the application represents good planning and is in the public interest, as well as considering fairness to the applicant. The Board concluded that the new policies "reflect the most current, modern, approved and sensible planning principles" (para. 7), and thus should be considered and given as much value as is appropriate in the circumstances.

In the case of Re Beechwood Farms Inc. v. Ajax (Town), [2008] O. J. No. 447, 44 M.P.L.R. (4th) 73, the Court discussed the "*Clergy* principle" at para. 19. This is a presumptive rule, the court stated, that the OMB (and by extension the TLAB) upon an appeal will apply only those planning practices and policies that were in effect when the application was made. The court concludes, "However, the *Clergy* principle is not a strict unvarying principle. ... land planning and predictions around land planning are fluid and...ignoring what is likely to happen in the future is not always consistent with the public interest." It confirmed the adjournment granted by the Board following the recent enactment of the provincial Growth Plan, which potentially affected certain lands that the Town wished to preserve for employment uses.

I conclude that the new OP provisions from OP 231 are both reflective of and reinforce the earlier protections for designated Employment Areas, and are therefore persuasive. Uses that do not support the designated employment uses are to be eliminated, and such applications refused. There is a very similar recent decision of the OMB, Owens Corning Insulating Systems Canada v. Toronto (City) [2015] O.M.B.D. No. 193, in which the Board also heard evidence from Ms. Condon on the point. It determined that a school use, as a sensitive use, was inconsistent with the OP, as well as the PPS and the Growth Plan. Another reason that it could not be supported in an Employment Industrial zone was that a new use cannot be introduced by way of minor variance (para. 30).

One can have every sympathy with Mr. Chowdhury's testimony that he has operated the business of a banquet hall and catering company without incurring any complaints from neighbouring industrial uses. It appears that there would be significant financial implications with moving the business from this location, where he has spent so much on improvements. However, I do not think it is appropriate to grant the requested variance. No matter the comparative size of the premises, its location is not permitted under the either applicable official plans or the zoning by-laws. Inquiries at the time of

Decision of Toronto Local Appeal Body Panel Member: G. Burton
TLAB Case File Number: 17 198730 S45 35 TLAB

entering into the lease might have resulted in advice about the legality of his proposed use. The TLAB must respect the many expressions of the City's policies for this area. Indeed, it cannot grant a variance if on the evidence it is satisfied that the general intent and purpose of the official plan or the zoning by-laws are not maintained. I cannot find that these tests have been met from the evidence presented. While it is arguable that this use is minor from the quantitative perspective, it cannot be found to be minor in its potential impact. It is not easy for Mr. Chowdhury to prove what is essentially a negative proposition, that is, that there has been and will be no impact on the neighbouring businesses or the availability of employment lands. I empathize with his position, but am constrained by the tests in the Act.

DECISION AND ORDER

The appeal of the City of Toronto is allowed, and the variances requested are not approved.

X 

G. Burton

Panel Chair, Toronto Local Appeal Body