

DECISION AND ORDER

Decision Issue Date Wednesday, June 05, 2019

PROCEEDING COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): ALEX BROGANTZ

Applicant: CHRISTIAN CHAN

Property Address/Description: 294 RONCESVALLES AVE

Committee of Adjustment Case File Number: 18 206864 STE 14 MV

TLAB Case File Number: 18 268724 S45 04 TLAB

Hearing date: Monday, May 06, 2019

DECISION DELIVERED BY GILLIAN BURTON

APPEARANCES

Name	Role	Representative
Christian Chan	Applicant/Expert Witness	
Alex Brogantz	Appellant	Alan Heisey

INTRODUCTION

The subject parcel is located on the west side of Roncesvalles Avenue and south of Bloor St. West. It is designated *Neighbourhoods* in the Toronto Official Plan (OP), and zoned Residential (R) in the new Zoning By-law 569-2013, now mostly in force; and Residential (R2) in the older Zoning By-law 438-86, as amended. An application to the Committee of Adjustment (COA) for minor variances which would permit the continued use of the existing florist shop in the first floor and basement was refused on November 28, 2018. Other required variances (parking, FSI) were also denied.

BACKGROUND

In its Public Hearing Notice, the COA described the application to it as follows:

“To legalize and to maintain the commercial use operating on the main floor of a three-storey detached dwelling. The remainder of the dwelling is occupied by two residential units. No external alterations will be done.”

Prior to this, the City Zoning Staff had characterised the application as one involving a “legal non-conforming use”. The property was described in the Zoning Notice as a “detached single family dwelling with an accessory doctor’s office on the ground floor”. The proposed use was termed “a retail store”. Prior to the COA hearing, Mr. Chan on behalf of the appellant company had objected to the Planning staff that the current use is **not** one of an “accessory doctor’s office on the ground floor”. It is indeed a non-conforming use, he said, as the Zoning Examiner had found, but is instead one in a long line of similar commercial uses within the residential property. It is not similar to an accessory doctor’s office use.

Upon appeal to TLAB, the owner purported to ground the appeal on two statutory bases: not only under subsection 45(1) for minor variances, as at the COA, but also under subsection 45(2) for the alteration of a legal non-conforming use. He had understood the COA application to include jurisdiction under subsection 45(2) as well, since the City itself had characterised it as a non-conforming use. However, the COA staff who received the TLAB appeal refused to add appeals under subsection 45(2) to the appeal form. He was told that this was not administratively possible, since the COA had only considered the application under subsection 45(1).

In this context, and as additional background, the owner now submits that the **present existing use** as a florist shop need not be fitted under the rubric of either an accessory doctor’s office or a “retail store” and be granted a variance as such. It differs from either of these, as defined. The present use could instead be authorised under either of the more specific grounds found in clauses 45(2)(a)(ii) or 45(2)(b) of the Act. This subsection is:

45(2) In addition to its powers under subsection (1), the committee, upon any such application,

(a) where 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,.....

(ii) **a use for a purpose that is similar to the purpose for which it was used on the day the by-law was passed or is more compatible** with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed, if the use for a purpose prohibited by the by-law or another use for a purpose previously permitted by the committee continued until the date of the application to the committee; ... or...

(b) where the uses of land, buildings or structures permitted in the by-law are defined in **general terms, may permit the use of any land, building or structure for**

any purpose that, in the opinion of the committee, **conforms** with the uses permitted in the by-law. (emphasis added).

MATTERS IN ISSUE

Does the present use as a florist shop qualify as a legal non-conforming use, rather than a retail store as defined? Can a florist shop be approved as a non-conforming commercial use in a residential zone by way of a minor variance, where there are policy guidelines seemingly prohibiting such uses without a rezoning?

JURISDICTION

For variance appeals, the TLAB must ensure that each of the variances sought meets 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, individually and cumulatively:

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

In this appeal, subsection (2) of Section 45 of the Act was also relevant. Subsection 45(2) is seen above.

EVIDENCE

The appellant’s expert evidence was provided by Mr. Christian Chan, an experienced professional planner. Mr. Chan also represented the appellant at the COA.

The recent factual background is fairly clear. The owner of a flower shop, called Sweetpea’s, Ms. Sara Jameson, entered into a lease with the owner of the subject

property in September 2017 following the end of the shop's lease elsewhere. Prior to this, the subject space, both basement and ground floor, had been used for about 14 years as a day spa, Sukha Spa, with ancillary retail sales. There had already been a commercial unit there well prior to the spa use. The spa had had a business license for its services, and the unit was subject to business taxes. The present use as a florist (since 2017) came to the City's attention because of a sale of Christmas trees on the public sidewalk, leading to a Notice of Violation from By-law Enforcement concerning the use.

The owner then applied to the COA for variances to permit the existing use. The use variance and other variances sought are found in Attachment 1. They are, in sum:

1. There are two rental apartments on the second and third floor, accessed by their own separate door, and these must be approved by a variance, as only one is allowed.

2. The floor space index requested by a variance is the existing FSI, and no exterior alterations are proposed. The 2013 By-law limits the total permitted FSI of the dwelling to 0.6 times the area of the lot (here, 184.88 sq. m.). The existing FSI is 1.23 times the area of the lot (380.03 sq. m).

3. Each rental dwelling requires 1 parking space (total: 2 spaces), and the proposed non-residential use requires 3, based on the floor area of the florist use. This means that the total required parking spots on the site is 5. There is presently one parking space provided, in a detached garage fronting onto Roncesvalles.

4. The main variances relate to the proposed use of the basement and the main floor for a commercial use, which is not permitted in the R2 zone. The owner relies on the statutory relief to continue a non-conforming use, that is, an **existing commercial florist use, identified (by Planning staff) as a non-conforming use** of the basement and main floor of the 2.5 storey detached dwelling. The Zoning Examiner had termed this a "mixed-use building containing a retail store and two dwelling units", but the owner disputes that it is a retail store as defined. An approval as requested would authorize the present florist use (which is not defined in the Zoning By-laws) in the basement and ground floor. These spaces have been used continuously for commercial purposes since at least 1949.

The Planning Report had classified the proposed florist use as a "retail store" as defined, since a "florist" or "flower shop" is not a defined use. The requested approvals are aimed at legalizing the existing use, however characterized. Prior to the COA hearing, Mr. Chan had challenged the Planning Staff's conclusion that the proposed use as a florist was a "retail store" as defined. However, their Report went to the COA in its original form. Much of the information therein, as well as the evidence in this appeal hearing, involved the conclusions reached by the Zoning Examiner in the Zoning By-law Notice (ZZC) dated May 22, 2018, prior to the COA hearing. Therefore its salient points are useful here: (with emphasis added).

“City-wide Zoning By-law

Project Description: Make interior alterations to existing detached house for **retail store and two dwelling units**. Retail store to be located on the ground floor and basement levels. Dwelling units to be located on the second and third floors.....

4. A search of our records revealed the approved use of the building to be detached house single family dwelling with an accessory doctor's office on the ground floor. The existing floor plans submitted are not consistent with building permit records. In the R district the proposed mixed use building containing **retail store** and 2 dwelling units is not permitted. Uses on the lot ancillary to the retail store are not permitted. A mixed-use building is not a permitted building type. 10.10.20.10.(1), 10.10.20.20.(1) and 10.10.20.40.

5. The by-law requires two **parking spaces** to be provided for the dwelling units, and three parking spaces are required for the retail store, whereas one space will be provided. 00.5.10.1

6. The permitted maximum **floor space index** is 0.6 times the area of the lot: (184.88 square metres). The proposed is 1.23 times the area of the lot (380.03 square m). [10.10.40.40.(1)]

Toronto Zoning By-law

No. 438-86, as amended.....

7. (*same as #4, then*):

The proposed use of mixed use building containing a **retail store** and 2 dwelling units is not permitted. Section 6(1): Uses on the lot accessory to the retail store are not permitted.”

Then the City Planning Staff report of Nov. 21 to the COA continued:

“In 2014, City Council adopted the "Roncesvalles Avenue West Side Guidelines", which are guidelines for the assessment of all small-scale retail, service or office use proposals on the west side on Roncesvalles Avenue between Marmaduke Street and Marion Street. (see Attachment 2 to this decision). The guidelines indicate that adding small-scale retail, service or office uses in the study area should go through rezoning applications. Size of the **accessory** use, the number of employees and permission to sell goods should go through minor variance applications....

The current **legal non-conforming use** for the property is a detached single family dwelling with an **accessory doctor's office on the ground floor**. City Planning staff contend that proposing a change from a doctor's office to a **retail store** is not "minor" in nature. A retail store could potentially result in larger negative impacts compared to a doctor's office. Accordingly, this application should go through a rezoning application to determine the suitability of permitting non-residential uses within the area, which aligns with the "Roncesvalles Avenue West Side Guidelines".

By way of neighbourhood context, Mr. Chan outlined the surroundings. These are important in the determination of the acceptability of the desired use in this location, especially given the “West Side Study Guidelines” (below, and addressed by a chart in his Expert Witness Statement, Ex. 2, p. 39). The site is a corner lot, with a separate entrance to the residential units at 127 Grenadier Road on the north side. There is a commercial entrance to the business on the east, from Roncesvalles. This is the first

indication that the commercial use in the basement and first floor is not an accessory use as claimed, Mr. Chan said. (This accessory issue was examined in the context of his argument that the florist is not a retail store.) The lot area is 308.15 sq. m., with a frontage of 10.08 m on Grenadier and a depth of 30.57m. The height limit is 10 m., with no lot coverage limitation. None would change. The west side of Roncesvalles, from Marmaduke St. to the north to Marion St. to the south, has the same residential R (d0.6) zoning as the site, while the east side is designated Mixed-Use and has mixed-use zoning C2 2.5 (c1.0; r2.0) SS2 (x1554). There, the height limit is 14 m.

The existing gross floor area of the 2.5 storey dwelling (built in early 1900s) is, as mentioned, 380.03 sq. m. This would not be altered. There are 3 mature trees on the property, none of which would be affected. The surrounding residential structures are similarly 2.5 storeys. To the south, 290 has an approved medical/dental office with front yard parking. This office use was authorized by the COA in 2011, which permitted an office in both the basement and the ground floor of the existing building. This Notice of Decision indicates that an office use is not permitted in an R2 district.

On the east side of Roncesvalles there is a connected row of retail, restaurants, and service uses on the ground floor, with residential units above. They are zoned for the mixed uses. The intersection of Grenadier and Roncesvalles is a partially-controlled intersection, with a crosswalk over Roncesvalles.

Roncesvalles is a two-way street classified in the OP as a “Minor Arterial”, with daytime pay parking in the curb lane on the west side, and overnight parking in designated parking spots. Because of the parking and extended bike paths on both sides, the street is effectively a two-lane street. Some portions have raised cycling platforms at the streetcar stops, including the subject block. There are about 2 m wide sidewalks behind these, with benches, bike rings and tree planters thereon. The corner lots nearby have detached garages fronting on Roncesvalles, with curb cuts across the sidewalks.

The streetscape can be characterized as a “complete street” and in the sub-type of “Avenue & Neighbourhood Main Street” according to the City of Toronto’s Streetscape Guidelines. The subject site is very well served by transit, with stops in the immediate vicinity for the “10-minute network”, which operates 10 minutes or better all day, every day. It is located approximately 1 km south of the Dundas West TTC subway station and the Bloor GO Station for the Weston GO line, as well as the Pearson UP Express.

Grenadier Road is a one-way residential street, running east from Sunnyside Ave. There is overnight permit parking, and 24 hour on-street parking. The street has a canopy of mature trees and vegetated front lawns, with no driveways, as parking is provided in laneway garages.

There is another level of planning applicable here. The site is on an Avenue as described on Official Plan Map 2, Urban Structure. However, the west side of Roncesvalles here is not subject to the Avenue guidelines (as it is within the *Neighbourhoods* OP Designation). Notwithstanding this, the Avenues overlay

encompasses the site. A 2010 Study, Avenues and Mid-Rise Buildings, identified Roncesvalles as a “Character Area” containing a fine grain, main street built form on the east side, and on the west side, a mix of fine grain main street with a number of churches and institutional buildings, plus walk-up apartments. The Study included commentary and analysis of “retail at grade”, and contains the following sentence: “It is important to note that the definition of retail in this Study is very broad and includes traditional retail categories such as food and beverage stores and clothing stores as well as food services, personal services, and other smaller focused professional type services. Other community uses such as libraries, day-cares, etc. may be applicable as well.”

The 2010 study does not apply in this application as there is no construction on the site, but there is, as mentioned, an analysis of “retail at grade” (Chapter 2.3 and Appendix B, Exhibit 1, Tab 26, obtained privately by Mr. Chan as, strangely, this is not part of the Study document on the website.) He testified that small scale service, retail and office uses may be permitted in Commercial-Retail (non-residential) areas, that is, sections of the Avenues that are Undefined Areas. Additional considerations such as parking, accessibility, and visibility are required.

As mentioned, in 2013 the City initiated a “Study for the West Side of Roncesvalles Avenue, Between Marmaduke Street and Marion Street” (the “West Side Study”). This would determine if certain non-residential uses should be permitted there. It was anticipated that there would soon be demand to convert the residential properties there to commercial or mixed use. Guidelines were adopted for the assessment of all small-scale retail, service or office use proposals in the study area. Many have been established. This proposal is therefore subject to a set of 8 guidelines to determine the suitability of permitting non-residential uses here. (Ex. 1, Tab 27, and Attachment 2). In his searches, Mr. Chan found many non-residential uses already within the structures in the residential designation on the west side, but few have been lawfully permitted.

Mr. Chan explained that the purpose of this application for variances is to recognize and **maintain the two rental apartment units on the upper floors** of the existing 2.5-storey residential dwelling, and **as well, to continue an existing non-conforming commercial use, a florist shop, in the main floor and basement**. This was not seeking to introduce a use, but to maintain it. The City’s definition of the use as a “retail store” would not in his opinion permit the desired commercial use. There would be no internal changes, as the spaces are already present. He set out to obtain proof of both the nature of the past uses within the structure, and their extent.

He testified that the first floor and possibly the basement have been used continuously for commercial uses since at least 1949.

He then addressed the issue of a remedy to authorize the non-conforming use proposed. The import of this application and its interpretation is very clear. If a rezoning is required, as advocated by City Planning in support of the Guidelines, it would necessitate as a minimum: a draft zoning amendment, a zoning certificate, traffic, loading and storm water management reports, a landscape plan, and a statutory public meeting. The cost would be prohibitive for the owner and the small business. Prior to

the owner's purchase there had been no notion of non-compliance with the zoning, as the spa use had been present for many years. It had been examined already by Building Code staff, with no suggestion of non-compliance.

Therefore, Mr. Chan had recourse to the provisions in subsection 45(2) for non-conforming uses, and found support there. To "fit" within the rules in subsection 45(2), he had to meet the tests of:

- a similar use for the purpose used on the day a zoning by-law was passed, **OR** a more compatible use [45(2)(a)(ii)]; **OR**
- under clause (b) of subsection 45(2), that the present use **conforms with permitted uses** (this provision does NOT require that the desired use be found to be a non-conforming use). (emphasis added).

As set out in the City Planning Report, the West Side Study Guidelines indicate that adding small-scale retail, service or office uses in the study area should go through rezoning applications. Lesser issues such as the size of the "accessory" use, number of employees and permission to sell goods could be the subject of minor variance applications. These guidelines led to Planning's opposition to what they termed a new "retail store" on this west side.

Mr. Chan disputed this characterization at the COA and the TLAB hearings. In his view, it is neither an accessory doctor's office use, nor a new retail store as defined. It would not be an accessory use (office) or a home occupation, both of which must be **within** a residential dwelling. The use here is operated in a large non-residential space, and has long had an external entrance door.

He examined the use permissions in the zoning by-laws over the years, to assess whether the proposed could be termed a continuing non-conforming use. A list of home occupations was included in the 1986 Zoning By-law, which permitted **Home/Work** uses in the R2 zone. These were to create an opportunity for commercial uses, but these were restricted to an accessory component of the principal residential use. Examples of "home/work uses" included:

- Office (e.g. doctor's office, realty brokerage office)
 - Studio (e.g. music studio, dance studio)
 - Caterer, Barber/Hairdresser/ Beautician, Dressmaker/ Seamstress/Tailor.
- An office (permitted as a home/work use) is not a defined term in the by-law. However, a (freestanding) **medical/dental office** is defined as "a building, other than a private residence, that is used for the office of one or more practicing...dentists...".

A permitted home/work office under the 1986 By-law, Mr. Chan stated, can be generally described as an office in a dwelling which is used to carry out the administrative duties of a business that performs services off the premises. This long-standing operation within the subject dwelling (see history below) was not only a medical/dental office, but also **a clinic and laboratory**. Dental surgery was performed on the premises. **He testified that these uses were non-conforming, as they were more intensive and**

less compatible than the permitted home/work uses in the R2 zone. [Thus it seemed to him that relief could be found under 45(2)(a)(ii).]

The history of the **commercial** use dated from December 1949, when a building permit was issued for a Doctor's Office in the building, and three residential dwellings. The assessment rolls showed a doctor as owner in 1951, but there is no evidence as to the extent of the floor area of the medical office until 1961. Zoning By-law 18642 in 1952 had permitted a doctor or dentist's office in the basement or main floor (**but not in both**) of a building in an R2 district, provided that the doctor or dentist regularly used the dwelling as his/her private residence. A Dr. Grenville was listed as the owner and occupant from 1951 to 1956, and was presumably using the lawful doctor's office for his own practice. In 1956 a building permit was issued for the detached garage.

In 1952 the City had begun assessing the commercial use for business tax purposes. The proportion of the structure was 30% (of which half of this would be liable for commercial taxes.) There was no use classification provided. In 1956, a dentist Dr. Matulak purchased the dwelling, and presumably began using the medical office in the building as a dental office. This could not at this stage have been a home occupation (permitted at the time), since there was no internal connection between this and the residence (three units then). In fact, by 1961 at least the main floor was used as a dental office and clinic, seen in plans submitted for a building permit. It was called a clinic in these plans, a use not permitted in the By-laws. It had the distinct appearance of a surgery suite, with laboratories, clinic and operating rooms (Ex. 1, Tab 48).

Beginning in 1997 the occupations of the owner and resident/tenants were no longer recorded on the Assessment Rolls. The tax classifications there were altered from "Residential" and "Professional/Commercial" to read "Residential" and "Commercial". Dr. Matulak continued to own the building until 2004, which appeared to be the same time that the dental office and clinic was operating, since commercial taxes continued to be assessed.

In 2004 the main floor and basement began to be used as a day spa named "Sukha Spa". This comprised the entire main floor and the functional areas of the basement, the same floor area now proposed for the florist shop. At this size it cannot be considered to be an ancillary use, he opined. It appeared to fall within the definition of "personal service shop" in the 1986 By-law, as it required an operating license. The City continued to assess the commercial portion of the building at 40%. Previous photos of the Spa (Ex. 1, Tab 46) illustrate the extent of the treatment rooms, etc. Property tax records show both 40% commercial and 60% residential property taxes being assessed. This use, personal grooming, was not permitted as a stand-alone use, and the spa was not an accessory use because of its size. Thus, he concluded, it was a non-conforming use in the vein of the previous commercial service uses there.

In conclusion, the use within the residential structure became a truly commercial use from 1960 on, has continued and has expanded beyond the 30% FSI restriction (now 25% since 2013). The commercial space as assessed is 207 sq. m. (out of a total

380.03 sq. m.) The historical and existing non-residential floor area, he said, is almost equal to the existing residential floor area: 166 sq. m. (or 207 sq. m. inclusive of mechanical, storage, washrooms and stairwells), and 173.5 sq. m. It also was a freestanding use, not an accessory one, with an exterior access door. Mr. Chan's conclusion on the nature of the uses since 1960 is that they were continuously commercial, were not within a dwelling unit but self-standing, and were in the nature of a service use similar to the proposed.

The 2013 By-law provided that a Home Occupation is a business use within a dwelling unit, where the dwelling unit is the principal residence of the business operator (Chapter 800, 345). This florist use could not be considered to fall within this definition. The business owner lives elsewhere.

Therefore, the florist use can be approved as a continuing non-conforming use under subclause 45(1)(a)(ii), as it is "similar" to the purpose for which it was used on the day the By-laws were passed (i.e., a commercial use a personal service shop), and is in fact more compatible with the uses permitted by the By-laws. It is more compatible since the impacts (parking, number of customers, etc.) are even less for the florist than the previous commercial use would have been. Mr. Chan highlighted the wording here, in that the use can be found to be similar to the non-conforming uses, OR more compatible to **permitted** uses. He found it to fit within the latter language as well. In his opinion relief can be granted for the florist use under this subclause 45(2)(a)(ii).

He examined the similarities among the historical non-conforming uses and the florist use in more detail. The medical uses since 1961 had had patients entering, first only to the main floor and later to the basement as well, where a service was rendered. More parking would be required under the By-laws (6 spaces) for an accessory doctor's office than for the proposed florist. The florist use is similar to the previous spa, in that clients purchase a service and not goods. Clients either call and order or attend the shop to order or purchase flowers, then arrange delivery. There is a minor ancillary sales use, of cards and gifts. This constitutes a small scale service rather than a retail use and is neighbourhood-based, and so compatible with its surroundings. There are no adverse impacts from this sales use, unlike the traffic or noise or other undesirable results seen for retail stores. A florist is exempted from the requirement for a license to operate, unlike the spa before it, and is thus seemingly acknowledged to have less of a conflict with surrounding uses.

Nor can this use be considered a retail store, as the City termed it. In the 1986 By-law, "retail store" means a **building** where goods, wares, merchandise, substances, articles or things are stored, offered or kept for sale at retailbut does not include a retail outlet otherwise classified or defined in the by-law In a Zoning By-law in 2010, "Retail Store" means premises in which goods or commodities are sold, rented or leased (690). It did not usually require a business license, unlike other types of businesses like the day spa, i.e., personal services. In the 2013 By-law, a "Retail Service" means **premises** in which photocopying, printing, postal, or courier services are sold or provided; and a "Retail Store" means premises in which goods or

commodities are sold, rented or leased (720). Neither definition applies neatly to the florist shop. The first is limited to office-related services. While the second could describe the florist shop, this shop is more akin to a service use, like its predecessor commercial uses. It is also clearly not a "Home Occupation", defined as "(345) Home Occupation means a business use within a dwelling unit, where the dwelling unit is the principal residence of the business operator." (see discussion below).

Because no license or yearly inspection is required for it, the City must, in Mr. Chan's opinion, view it as a less impactful use. Even a retail store must be licensed for certain sales (food, cigarettes and alcohol). Mr. Chan submitted that the previous non-conforming use as a surgery suite would have had several doctors/dentists, employees and operate six days a week. The present use as a florist, with few staff, would have significantly less impact on the neighborhood. There are Building Code requirements for medical offices, so stricter standards apply than to a florist.

The floor area of the commercial use at the passing of the 1986 By-law is another aspect that is non-complying. In the 1986 By-law a home/work use accessory to a dwelling unit in an R2 zone was limited to 30 sq. m., or 30% of the residential dwelling unit's gross floor area. As well, "home/work" uses were limited in operational requirements: the operator must be a resident of the dwelling; selling of goods was not permitted; and the number of employees was restricted to two. Following the 1961 building permit, the commercial floor area within the subject dwelling was a majority of the total. Mr. Chan does not consider this former use as a dental surgery a "home/work" use. By examining tax assessments from the 1950's on up, he saw evidence that 40% of the property was taxed as a commercial use. It was indeed a stand-alone commercial use in much of the building.

By way of illustration of the extent of the use possible as a medical office in the existing space, first floor and basement, the owner commissioned architectural drawings. The report stated: "Based on the floor plan provided a total of 1785 sf is available. Based on a typical program of administrative/files storage area, 2 to 3 offices for the doctors or dentists, a waiting room, 2 washrooms, mechanical and other common areas such as corridors we estimate there would be room for approximately 7 examination rooms for a medical office or clinic (average size 50 to 75 sf) and 5 examination/dental chairs for a dental office (average size 75 - 100 sf)." (Exhibit 4).

A medical/dental clinic or laboratory is not listed as a permitted home/work use in the R2 zone in the 1986 B-law. A dentist's office is a permitted "home/work" use, however only in an apartment building (3 or more dwelling units), and on the first floor or in the basement.

In Zoning By-law 569-2013, the West Side Study area of Roncesvalles is zoned R (Residential). The permissions for a residential accessory use (now defined as "**home occupation**") are generally consistent with that of By-law 438-86, except for a reduction in the space permitted for accessory uses to lesser of 100 square m., or 25 percent of the residential GFA. Relevant provisions are set out below, as they are important to Mr.

Chan's opinion that the proposed use is NOT a "home occupation" under similar or present By-laws (and is thus authorized as such, rather than being non-conforming). See the exceptions below as well:

150.5.20.1 General

(1) Home Occupation - Uses Not Permitted

A home occupation may not:

- (A) sell, rent or lease physical goods directly from the dwelling unit;
- (B) be a personal service shop;
- (C) be an office or medical office for a professional regulated under the College of Physicians and Surgeons of Ontario;
- (D) be an office or medical office for a professional regulated under the Regulated Health Professions Act, 1991, S.O. 1991, c. 18, as amended; (exceptions below)....
- (G) be a manufacturing use.

(2) Home Occupation - No Customer or Client Attending the Premises for Specified Reasons

A home occupation, other than one for an education use, may not have clients or customers attending the premises for:

- (A) consultations;
- (B) receiving services; or
- (C) obtaining physical goods.

(3) Home Occupation - No Outdoor Activities, Services, Display or Storage

A home occupation may not have outdoor activities, services, display or open storage.....

6) Home Occupation - No Employee Other than the Business Operator-

A home occupation may not have an employee working in the dwelling unit who is not the business operator.

(7) Home Occupation - **Personal Services Permitted** in the R Zone

Despite regulations 150.5.20(1) and (2), a home occupation in the R zone may be a personal service shop, limited to the following types of services:

- (A) barber;
- (B) hairdresser;
- (C) beautician;
- (D) dressmaker;
- (E) seamstress; and
- (F) tailor.

(8) Home Occupation - Health Related Professionals Office Permitted in the R Zone-

(A) Despite regulations 150.5.20.1(1) and (2), a home occupation in the R zone may be:

- (i) an office or medical office for a professional regulated under the College of Physicians and Surgeons of Ontario; and
- (ii) an office or medical office for a professional regulated under the Regulated

Health Professions Act, 1991, S.O. 1991, c. 18, as amended; and
(B) Despite regulation 150.5.20.1(6), a home occupation in the R zone described in (A), above, may have one employee working in the dwelling unit in addition to the business operator.

These provisions do not authorize the florist use, Mr. Chan testified. The non-residential use at 294 Roncesvalles is an existing self-contained, physically separate commercial use within the residential building. The West Side Guidelines in his opinion are directed mainly to conversions of entire buildings to commercial uses, as was done at 314 Roncesvalles when it became a music conservatory. In its 2011 decision for 290 next door, the COA had permitted a (large) office use in the basement and on the main floor (A0133/11TEY). Extensions of non-conforming uses were already occurring.

Mr. Chan reasoned that the previous use as a day spa, being a personal service use, must have had a business license as such. During its license application, it must have been grandfathered as a legal non-conforming use, since it was a freestanding commercial use. He testified that a non-conforming use may include numerous activities, including uses that are not listed and/or defined in the Zoning By-law. In terms of commercial uses in *Neighbourhoods*, the Official Plan contemplates that there will be small scale retail, service and office uses therein. Here, the Appellant seeks approval to change to another nonconforming land use that, in his opinion, is **similar** to the previous land use and continues a similar legal non-conforming land use in the same floor area that was occupying by the former legal non-conforming uses. He also pointed out that over one hundred neighbours had signed a petition in favour of the current use as a florist.

A “continuing” non-conforming use?

Respecting s. 45(2)(a)(ii) of the Act, one must consider both the use on the day the by-law was passed and the continuity of this use; and the similarity to the purpose for which it was used on the day the by-law was passed. Here, a self-contained commercial use has remained on the site throughout many iterations of zoning by-laws. Mr. Chan’s research in the Toronto Archives’ assessment rolls illustrates that a substantial amount of floor area was devoted to a separate commercial activity within the dwelling structure since at least 1949. He prepared a comprehensive chart showing the split of the residential and commercial portions of the property, and termed it “the history of legal non-conformity on the Site.” He then traced the nature of the non-residential uses therein (Exhibit 1, paras. 202 – 252). He concludes that the florist use would be similar to the previous non-conforming commercial use, AND as a small-scale service use, it would be more compatible with the uses permitted, because it is of a lesser intensity.

He then considered the test in clause 45(2)(b). This addresses uses “defined in general terms” in the By-laws. The proposed use as such is not included in the By-laws. It is not a “retail store” as this is generally self-service, with food sales requiring a license, while a florist is a service function. Following consultation, staff arranges flowers in a

workshop setting, and delivers them to recipients. A “retail service” as defined is limited in the By-laws to essentially a postal or courier function. A florist does not fall within this. Respecting conformity with permitted uses, he equated the florist use with permitted personal service uses provided in a home occupation or a home office. To obtain relief under the subsection, the desired use does not have to “comply” with the permitted uses under this provision, he argued, it merely must “conform”. This raises the question of whether the proposed use is similar in intent to one permitted. The florist use in his opinion fits within the notion of conformity with permitted “service” uses. As an example of what could be included within the existing commercial space, the owner presented an architect’s conception of possible medical uses, which would have a far greater impact than the proposed use (Exhibit 4). There is no neat fit within the current By-laws, since although an accessory use is permitted here, the use of the commercial space has never been accessory to the residential use. He argues that there is conformity with the services uses permitted under the provisions for accessory or home occupation uses.

He also equates the use to the permitted use of a retail store, since a retail store IS a permitted use, but is subject to the performance standard of being within a 100-unit apartment building.

Provincial Plans

On the subject of Provincial planning policies, Mr. Chan testified that the Site is within the settlement areas and delineated built-up areas in the Growth Plan. This Plan both directs the vast majority of growth to settlement areas and supports the achievement of complete communities, encouraging a mix of land uses. The proposal would meet the policies of the PPS to make efficient use of land, minimize impacts to the environment, be transit supportive, and make efficient use of existing infrastructure.

Official Plan

The OP designates Roncesvalles as an “Avenue”, and it is classified as part of the Surface Transit Priority Network. It is well served by schools, and has access to both High Park and Sorauren Park. This side is designated “*Neighbourhoods*” in the OP. Lands on the east side, across the street, are designated as Mixed-Use Areas which permits a variety of ground-related retail, service and office uses, with residential units above, fronting onto the Avenue. There is no Site and Area Specific Policy or Secondary Plan applicable to the subject property.

Neighbourhoods are considered physically stable areas made up of residential uses in lower scale buildings such as detached houses, semi-detached houses, duplexes, triplexes, townhouses and walk-up apartments of up to 4-storeys. The OP identifies these established areas as physically stable, with new development having to respect and reinforce the existing physical character of the neighbourhood. Respecting small-scale retail, service and office uses, policy 4.1.3 of states:

“...New small-scale retail, service and office uses that are incidental to and support Neighbourhoods and that are compatible with the area and do not adversely impact adjacent residences may be permitted through **an amendment to the Zoning By-law, where required**, on major streets.....To maintain the residential amenity of Neighbourhoods, new small-scale retail, service and office uses will:

- a) serve the needs of area residents and potentially reduce local automobile trips;
- b) have minimal noise, parking or other adverse impacts upon adjacent or nearby residents; and
- c) have a physical form that is compatible with and integrated into the Neighbourhood."

He argues that because of the continuing non-conforming use, no such zoning amendment is required. In the West Side Study, it is stated that lands within Avenue corridors are to be incrementally reurbanized to accommodate growth. However, OP policy 2.2.3.4 indicates that, where *Neighbourhoods* is the underlying designation on lands within an Avenue, the *Neighbourhoods* policies prevail. Land use designations surrounding the study area includes Neighbourhoods....to the west, and Mixed Use Areas fronting Roncesvalles Avenue to the east, north and south. As the study area is adjacent to the Mixed Use Areas designation across Roncesvalles Avenue to the east, policy 4.5.2(c) directs development within such areas to locate and mass buildings to provide a transition towards the lower scale Neighbourhoods.

Zoning By-laws - 438-86

The subject property is zoned R2 (Residential) under the earlier By-law. This permitted a range of residential building types with a maximum height of 10 m., as reflected in the current buildings in the West Side Study area. It also permitted a "home/work use", but this is limited to accessory to the principal residential use, with restrictions for size; the operator must be a resident of the dwelling; the use cannot exceed the lesser of 30 sq. m. or 30 percent of the residential GFA of a dwelling unit; selling of goods is not permitted; and the number of employees is restricted to two. The requested use does not meet the requirements of this By-law.

By-law 569-2013

Under the new by-law, the area is zoned R (Residential). The permissions for residential and accessory uses (here defined as "home occupation") are generally consistent with that of Zoning By-law 438-86. Exceptions to this are the deletion of certain accessory uses, and revision of the space for accessory uses to the lesser of 100 sq. m. or 25 percent of the residential GFA. The desired use does not appear to fit within these limitations.

Desirable and Minor

The application seeks to permit a compatible commercial use on the property where various other commercial uses had existed since 1949 in the same space as proposed for the florist shop. It is desirable in his opinion to continue to permit a type of low-impact, locally-scaled business on the site and along Roncesvalles that serves the neighbourhood and optimizes the existing floor area on the lot. It is desirable to encourage and support small businesses along this transit priority segment. It will not destabilize the neighbourhood, as it proposes a comparable non-residential land use in the non-residential floor area historically and currently provided for in the existing building. It is representative of compact built form, has no adverse impacts and contributes to a complete community.

It does not propose to introduce a new incompatible land use in relation to the nearby buildings, or the Roncesvalles street frontage. In fact, the Official Plan recognizes that Neighbourhoods will contain small-scale retail, service and office uses within those neighbourhoods, and on lands with a Neighbourhoods designation. The existing residential units on the upper storeys are desirable, as they maintain a variety of housing options in this neighbourhood, and the existing rental housing stock.

In summation, Mr. Chan stated:

“In my opinion, the previous commercial land uses conformed to the OP’s description of small-scale retail, service and office uses, and the proposed florist business is similar to the purpose of the previous uses on the Site, in that it provides a comparable service use that is incidental and supports the neighbourhood, is compatible with the area, and does not adversely impact the adjacent residences, and the residences on the Site itself.” (Ex. 1, para. 281)

ANALYSIS, FINDINGS, REASONS

Can TLAB accept an appeal under subsection 45(2) as well as 45(1)?

It is arguable that the TLAB cannot accept an appeal under subsection 45(2), as the COA staff informed Mr. Chan. Their reason was that this subsection was not explicitly referred to in the COA Decision. However, I rely in fact upon this omission, and on the fact that the Notice of Decision mentions only “section 45” up front. This enables me to accept the Applicant’s Disclosure (Form 3), which states that the owner intended to seek relief under subsection 45(2) as well. The City staff themselves had called the use a “legal non-conforming” one, both before and after the application was filed. Subsection 45(2)(a) is the subclause that deals with the approval of a non-conforming use. Thus I accept the appeal under that subsection, and would, if necessary, amend the Notice of Appeal to include a checkmark beside both subclause 45(2)(a)(ii) and even clause 45(2)(b). I see from Exhibit 3 that Mr. Heisey did file eventually like this.

What is the statutory foundation for the requested relief?

It is clear that the applicant has some challenges in applying the statutory language to provide relief in this fact situation. Mr. Heisey for the owner provided the following propositions for TLAB, any one of which he submitted could be the basis for the decision in this appeal:

1. If the City is correct in classifying a florist shop (which is not defined) as a “retail store”, the latter **use** is in fact defined and **permitted** in this Residential zone. However, the performance standard permits a retail store only in an apartment building of at least 100 units. In this intense mixed use area, where retail predominates on the east side, he argued that the west side of Roncesvalles could be equated to a “horizontal” 100-unit residential building. The zoning By-laws permit a retail store in a 100-unit residential apartment. Therefore, where the density is organized horizontally

rather than vertically, there should be no reason not to approve a similar use here. Thus, the By-laws could and should be varied to permit a use similar to a permitted retail store in this location.

2. The staff report to the COA identified the existing use as a legal non-conforming one: a detached single family dwelling with an accessory doctor's office on the ground floor. The evidence shows that the actual use has been a freestanding commercial one for many years, and is not an accessory one. Thus, the florist use may be approved under subsection 45(2)(a)(ii), that is, as a use for a purpose **similar to** one in existence when the By-laws were passed, or one **more compatible** with the uses permitted in the By-laws.

3. Another possibility to support the use is found in subclause (b) of subsection 45(2). If the permitted uses are defined in "general terms", COA (and TLAB) may permit a variance for a use for any purpose that **conforms** with the uses permitted in the By-law. Here it is arguable, he put it, that the permitted use defined by staff as a "retail store" is inapt or ambiguous as support for the current use. Sweetpea's is a **service** use (flower arranging, on order, and delivery, with a small retail activity for related goods, cards, etc. as well). Retail is not the overall use for the florist. There have been many service-related commercial uses here over the years, including the most recent, a licensed day spa (with hairdressing, massages, etc.). The florist activity may "conform" with the permitted use of a retail store, but it would be less invasive and impactful. Therefore a variance should be granted to authorize the use. (I note that this subclause does not apply only to a non-conforming use, as in 45(2)(a), but **any** use defined in general terms.)

Mr. Heisey put it that if a "similar use" could be proposed that presented fewer adverse impacts for to the neighbourhood than the existing non-conforming one, this would be in the public interest. The evidence showed that a doctor's office as a home occupation (so misidentified by staff) could have greater impacts than a florist (requiring many parking spaces, patient access, more active treatment spaces, employees, etc.). A small-scale service use, with a very small retail component, would meet the goal of greater compatibility and conformity. He argued that the continued history of the commercial use in this dwelling would support an approval for this application.

I am assuming that by this argument that he is accepting as his choice of relief subclause 45(2)(a)(ii). I agree that the language of this subclause is closest to the fact situation here.

Variances to the use

In *Fred Doucette Holdings Ltd. v. Waterloo(City)*, 1197 CarswellOnt 2765, [1997] O.J No. 6292, 32 O.R. (3rd) 502, the Divisional Court approved of a variance to permit a use, saying that the Act expressly contemplated a **variance** from the by-law respecting the **use** of the land. Further, "Any decision of a committee of adjustment permitting a variation in the use of the land authorizes a use not permitted by the existing by-law." The question is not whether a **new** use had been authorized, but whether the requested

use could be considered to be a **minor variance** in light of the by-law and section 45 (para 19). Considering this, and the introductory words in subsection 45(2) “upon any such application”, I must consider the requested authorization of the florist use as a minor variance, subject to the usual tests.

But can relief be found under subsection 45(2)(b), as Mr. Heisey suggested? In *3 Dogs Daycare Inc. v. Burlington (City)*, 2018 CarswellOnt 9830, the appellant sought a variance under both 45(1) and 45(2)(b). The LPAT determined that the use as described by the Zoning Examiner was a defined term, a kennel (a finding that LPAT said could not be challenged). Thus there was no scope to find that the proposed accessory use could be permitted under clause 45(2)(b), since the permitted use was not described in general terms. The decision states: “...s.45(2)(b) does not seem to be available for a variance request. It was Mr. Ramsay’s opinion that [it] could not apply to this application because a kennel is **specifically defined** under the ZBL.” (para. 26, emphasis added). The LPAT agreed, and considered the appeal only under 45(1). I find that this case has no application to this one, as a “florist shop” is not a defined use in the By-laws.

In clause 45(2)(b), if permitted uses are “defined in general terms”, a use may be legitimized by a minor variance if it “conforms with the uses permitted.” 45(2)(b) does not refer to a non-conforming use; it can be any use. 45(2)(b) is a source of jurisdiction to declare an “ambiguous” use (my term) to be legalized **if it conforms with permitted uses**. I cannot see that the applicable uses are described in general terms in this appeal. Thus I do not find authority to approve the requested use under this subsection.

How to assess a proposed change to a non-conforming use?

As mentioned, the introductory words of subsection 45(2) provide that in such an application (i.e. for a minor variance), “**in addition to**” the power to approve a minor variance for a use, the committee (and the TLAB, on appeal) has the powers set out there respecting non-conforming uses. I am interpreting this language as not being (strictly speaking) subject to the earlier tests in 45(1) for a minor variance. Otherwise it would not have much meaning, as the powers in subsection (2) appear to be **an exception and addition** to the power to grant a use variance in 45(1). The application for the **use permission** here, made “upon such application”, need **not** exactly meet the tests of general intent and purpose of the OP and the Zoning By-laws. The majority of the Divisional Court in the *Fred Doucette Holdings Ltd.* case (above), held that a use permission is considered in the same way as another type of minor variance. This would seem to import the “general intent and purpose” tests. However, the court there was not considering subsection 45(2), but only the power to change a use in section 45(1).

The City documents themselves provided the assessment that the application concerned a “non-conforming use”. It seems difficult to find strict compliance with the OP policies because of this. Thus, the tests of general intent of the OP and Zoning must be interpreted somewhat liberally here, because (by definition) the use does not conform to them. An application to approve aspects of this non-conforming use may not be able to closely meet the By-laws’ general intent and purpose. Here, because of the

continuing non-conforming use, no zoning amendment is required (as the West Side Guidelines would have it), and the use may be approved under 45(2)(a)(ii) as a minor variance to the By-laws.

However, since small-scale commercial uses are permitted in residential designations, I find that this particular use would meet the test of the general intent and purpose of the OP and the By-laws in any event. A small-scale service use here mostly complies with their general intent and purpose. This service use is indeed almost larger and more intense than the permitted residential use, but as a general use it has existed there since 1949, with approximately the same square footage since 1961. I find that it is desirable for the appropriate use of the land, and is minor in the context. The longstanding commercial unit has been present with no adverse effects until the Enforcement Unit forced its reconsideration. There are different things to be considered when assessing the merits of change on the west side of Roncesvalles because of the differing OP designations and zoning. Care must be taken not to authorize a use that will have negative impact. I do not find that this florist use would cause additional negative impacts.

It cannot be considered to be a retail store. Such a store is a defined and permitted use in a residential zone, but is limited to being within a 100-unit apartment. The west side of Roncesvalles does not equate to an apartment building, i.e. a horizontal one rather than a vertical, as was argued. The definition of a “retail store” is exactly what the owner was attempting to **refute** throughout, so it cannot then argue that the florist “conforms” to this permitted use. The problem with an approval based on a “horizontal” apartment building is that there is at present very little else that can qualify as a retail store on the west side of Roncesvalles (although Mr. Chan included photos of many on nearby streets). This, together with encroaching restaurants, appears to be the very possibilities that led to the West Side Guidelines requiring a rezoning for such a use. However, the retail component of this proposed service-based use is a very minor one, and the problems of additional parking, customer access, intensity and licensing of the use are not present for the proposed use as a florist.

Mr. Heisey also argued that the subsection would allow the “purpose” of a service shop use because it conforms to the general language allowing services within the permitted use of a home office. I found the case presented on this point not to have direct application. I conclude that the florist is a service use, with retail components as Mr. Chan submitted. This use is not clearly permitted by the applicable By-laws, and as mentioned I cannot conclude that it “conforms” with permitted uses and may therefore be authorized under clause 45(2)(b).

Respecting the power to approve a use under 45(2)(a)(ii), I find that the florist is acceptable as a use “similar to” the existing non-conforming commercial use, for the reasons Mr. Chan gave (it being mainly personal service-oriented). Because of its size and separation from the residential use, I cannot find it to be or “more compatible” with the permitted uses as this subclause would permit. However, the language here is **disjunctive**. Therefore, if the first test of similar to the purpose for which it was used

upon by-law passage is met, the desired use can be approved. It need not be “more compatible” with the permitted uses.

Much time was devoted to assessing the suitability of the proposed use in the context of both sides of Roncesvalles, when the West Side Study distinguished the west side residential uses from the mixed uses on the east. I conclude from the fact that the City was not represented at the TLAB that it has no real objections to the proposed non-conforming use, in spite of the West Side Guidelines and its Planning Report to the COA. The only neighbourhood opposition at the COA was a letter from Mr. John Klein, giving 310 Roncesvalles as an address, and claiming to represent unidentified local residents and business owners. Upon inquiry, such a person did not reside at this address. He did not appear at either the COA or the TLAB. Mr. Chan observed that the COA relied considerably on this letter in refusing the requested variances. This is to be very much regretted if he cannot be identified, or was ill-advised in sending the letter of objection. It caused much delay and cost to the owner.

Variances from development standards

There are elements of non-compliance with the present By-laws' development standards, requiring variances for FSI, parking, and the two residential units. Respecting the tests for meeting the general intent and purpose of the OP and the Zoning By-laws, I have no issue with approving a variance for any of these. The existing two dwelling units in the upper floors require no alterations and do not increase the FSI. They have a separate entrance. These requested variations of the By-law standards satisfy the tests of meeting the general intent and purpose of the OP and the Zoning By-laws, and provincial policies, especially encouragement of affordable housing. They are indeed minor variances as they are effectively present conditions, mostly of long standing.

In close study it may be seen that the application mainly respects the West Side Guidelines for many of the factors set out there. Authorizing this use does not in my view require a zoning amendment.

I am satisfied that the application satisfies matters of provincial interest as set out in section 2 of the Act, and that the variances and use approval meet the PPS and Growth Plan as addressed by Mr. Chan. I have had regard for the earlier COA materials and decision.

DECISION AND ORDER

1. The appeal is allowed, and the minor variances as set out in Attachment 1 are authorized, subject to the condition in No. 2 below. The existing commercial use of the basement and main floor of the detached dwelling as a florist is approved. No further notice of this decision is required.

If there is any clarification needed, the TLAB may be spoken to.

2. There shall be no expansion of the use beyond the present size of the commercial space.
- 3.. There shall be no outdoor sale of goods or services.

ATTACHMENT 1 – VARIANCES

1. Chapter 10.10.20.10.(1), Chapter 10.10.20.20.(1) and Chapter 10.10.20.40, Bylaw 569-2013

A detached single family dwelling containing an accessory doctor's office on the ground floor is permitted.

In this case, the building has been converted to a mixed-use building containing a commercial service use and two residential dwelling units, which is not permitted.

2. Chapter 200.5.10.1, By-law 569-2013

Five parking spaces are to be provided – one for each dwelling unit, and three for the retail store.

In this case, one parking space will be provided for the entire building.

3. Chapter 10.0.40.40.(1), By-law 569-2013

The maximum permitted floor space index is 0.6 times the area of the lot (184.88 sq. m.)

The floor space index of the building will be 1.23 times the area of the lot (380.03 sq. m.)

4. Section 6(1), By-law 438-86

A single family dwelling is permitted to contain an accessory doctor's office on the ground floor.

In this case, the building has been converted to a mixed-use building containing a commercial service use and two residential dwelling units, which is not permitted.

ATTACHMENT 2 – CRITERIA – WEST SIDE GUIDELINES

“Consistent with policy 4.1.3 of the Official Plan, whereby new small-scale retail, service or office uses may be considered within the Neighbourhood designation, the following set of performance standards is to guide the review of such proposals for the area west of Roncesvalles Avenue, between Marmaduke Street and Marion Street. The set of performance standards is complementary to the Neighbourhood designation policies in the Official Plan.

Nature of Operation

- 1) The proposal is incidental to the neighbourhood, i.e., the use provides a service

need to the immediate neighbourhood, and does not exclusively rely on customers from outside of the neighbourhood;

- 2) The proposal does not create adverse parking and traffic impacts in the neighbourhood;
- 3) The proposal does not create adverse noise, air and/or light emission impacts in the neighbourhood;
- 4) The proposed use does not extend outside the building envelope;
- 5) The public pedestrian access of the proposed use is limited to the frontage of Roncesvalles Avenue;
- 6) Eating establishments, and similar uses are not permitted.

Built Form

- 7) The proposal respects the physical character of the study area, i.e.:
 - size and configuration of the lots
 - height, massing, scale and dwelling type of nearby residential properties
 - prevailing building types
 - setback of buildings from Roncesvalles Avenue
 - conservation of heritage buildings, structures and landscapes; and
- 8) The proposal occupies only the first floor and/or the first below grade level of the building.

Certain accessory uses to a residential building may be permitted through a minor variance application, provided it conforms to the criteria of a "live/work" use under Zoning By-law 438-86 or a "home occupation" use under Zoning By-law 569-2013, at the discretion of the Chief Planner and Executive Director, City Planning Division. The criteria for determining if an accessory use may be considered as a minor variance are:

- i. The gross floor area of the accessory use does not deviate significantly from the Zoning By-law permission;
- ii. The main operator of the accessory use resides in the same residential building; and
- iii. The sale of goods may be acceptable provided it has minimal impact on the residential building and is incidental to the proposed use."

X 

G. Burton

Panel Chair, Toronto Local Appeal Body