

DECISION AND ORDER

Decision Issue Date Tuesday, December 24, 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): City of Toronto

Applicant: Glen Schnarr & Associates, C/O Jim Levac

Property Address/Description: 200 Ronson Dr

Committee of Adjustment Case File: 19 210640 WET 01 MV (A0433/19EYK)

TLAB Case File Number: 19 233028 S45 01 TLAB

Hearing date: Tuesday, December 17, 2019

DECISION DELIVERED BY D. Lombardi

REGISTERED PARTIES AND PARTICIPANTS

Appellant	City of Toronto
Appellant's Legal Rep.	Nathan Muscat
Appellant's Expert Witness	Rory McNeil
Party	Glen Schnarr & Associates
Party's Expert Witness	Jim Levac
Party's Legal Rep.	Mary Flynn-Guglietti
Owner	200 Ronson Drive Inc

INTRODUCTION

This is an appeal to the Toronto Local Appeal Body (TLAB) by the owners (200 Ronson Drive Inc.) of 200 Ronson Drive (subject property) from a September 26, 2019 decision of the Etobicoke-York Panel of the Committee of Adjustment (COA) to permit an educational use in the existing office building at 200 Ronson Drive.

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The subject office building is located on Ronson Drive in the former municipality of Etobicoke. Ronson Drive, which curls off of Martin Grove Drive, runs as a service road parallel to the Highway 401 collector between Martin Grove Drive and Kipling Avenue, providing affording the subject building excellent visibility from Highway 401.

The subject lands are designated *Core Employment Areas* in the City Official Plan (OP) and zoned Employment Industrial (E) under the new harmonized Zoning By-law 569-2013 (new By-law) and Class 1 Industrial (IC1) under the former Etobicoke Zoning Code (former By-law).

The lands contain a purpose-built office building (200 Ronson Drive) surrounded by parking on all sides and separated by a Hydro Corridor from other employment lands to the north.

BACKGROUND

The owners of the subject office building applied to the COA to permit a private career college tenant, CDI Career College (College/CDI), to occupy two units within their building at 200 Ronson Drive.

The subject office building is a 7-storey, 16,108 m² building built approximately 30-40 years ago which has continued to experience vacancy issues similar to those issues of many of the new office buildings constructed in the vicinity of Pearson international Airport over the past 20 years.

CDI Career College is a privately-run college with 23 campuses across Canada, including 4 locations in office buildings in Ontario found in Mississauga, Brampton, and former North York, and Scarborough.

The College offers training to adults in a variety of business, medical and technology occupations as well as construction and electrical related trades where students develop skills that are in demand by leading employers.

The College prepares students to obtain employment by combining classroom work with practical, hands-on- learning experiences. It is described as a post-secondary school and the student population consists of adults seeking practical training.

CDI is currently seeking to operate a new location from Etobicoke in the existing vacant space within 200 Ronson Drive.

As CDI was deemed to be defined as a 'post-secondary school' by the City, this definition fell outside of the classification of an Education Use as per the new By-law and, therefore, a variance was required to permit the College to locate in the subject building.

The original application to the COA was submitted in May 2019. However, due to a number of issues related to negotiations between the owner and the tenant a lease agreement was not secured and in correspondence dated July 4, 2019, the applicant

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requested that the file be closed. The COA passed agreed to do so by passing a motion closing the file at the July 18, 2019 meeting.

Subsequently, the variance application that is before the TLAB requesting a variance to permit the College to operate in the subject office building was, again, submitted to the COA.

On internal circulation to City departments, both City Planning and Economic Development staff provided comments initially recommending refusal of the application. In a memorandum dated September 17, 2019, Planning staff expressed concerns stemming from the proposed use being considered an '*Educational Use*' which staff deemed a "school." They considered this type of use a "sensitive land use" (Planning Staff Report, p. 2) and not permitted in *Core Employment Areas* designation in the OP.

The City's Economic Development Division staff expressed similar concerns in their September 24, 2019 comments noting that the proposed use is considered a sensitive land use and "*approval of sensitive uses may act to destabilize an employment area.*" Additionally, Economic Development staff concluded that the location of sensitive uses could adversely influence location and investment decisions of otherwise permitted businesses either considering or already within employment areas to avoid land use conflicts.

One day prior to the COA hearing, Ms. Mary Flynn-Guglietti, the applicant's solicitor, submitted a 9-page document (Exhibit 1, Tab 2) to the Committee requested that the application be amended to permit a "**Post-Secondary Adult Training Facility**" as opposed to an '*Education Use*' as had been requested in the original application.

In her submission, dated September 25, 2019, Ms. Flynn-Guglietti provided clarification as to why this reclassification of the intended use (by CDI) "*does in fact meet the intent and purpose of the Official Plan and does not constitute a conversion as suggested in the September 17, 2019 Planning Report filed with the Committee*" (Exhibit 1, Tab 2 – p.19).

She asserted that based on the type of training provided by CDI and the wording found in Policy 4.6 of the Official Plan, paragraph 2 that "*Industrial trade schools are traditionally permitted in Employment Areas and are provided for in Core Employment Areas (Exhibit 1, Tab 2),*" the College use did in fact meet the intent and purpose of the OP and did not constitute a conversion of employment lands as suggested by Planning staff.

On September 26, 2019 the Committee approved the variance subject to the following conditions:

1. *The Committee of Adjustment's decision of approval shall be valid for a period of 10 years, expiring on October 20, 2029;*
2. *The educational use shall be restricted to a post-secondary adult training facility;*
3. *The educational use (post-secondary adult training facility) shall be restricted to suites 202 and B4 with a maximum combined floor area of 696 m².*

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The City subsequently appealed the Committee's decision to the TLAB, and a Hearing was set for February 13, 2020. In the Notice of Appeal (Form 1), the City provided the following grounds for the appeal:

1. The requested variance does not maintain the general intent and purpose of the Official Plan, or zoning by-law. The requested variance contravenes the Official Plan policies for uses in *Core Employment Areas*, for which an educational use is not permitted. The education use is not a permitted use in an E- Employment Industrial zone in 569-2013, and the proposed use is not permitted within any of the permitted uses in *Core Employment Areas* or in the E- Employment Industrial Zone. The Application does not meet the intent and purpose of the zoning by-law.
2. The introduction of the educational use in an *Employment Areas* designation, even as restricted by the conditions in the Decision, would be tantamount to a conversion of land which is prohibited unless in the context of a municipally initiated Municipal Comprehensive Review. The Application is not in the context of a Municipal Comprehensive Review and a minor variance or zoning by-law amendment to allow the use is not permitted, is not consistent with the Provincial Policy Statement (2014), and does not conform to the Growth Plan for the Greater Golden Horseshoe (2109);
3. The requested variance is not minor and is not desirable for the appropriate development of the Site;
4. The proposal does not constitute good planning; and
5. Any further reasons that counsel may provide and that the TLAB may allow.

On November 14, 2019, the TLAB received correspondence from the City solicitor, Mr. Muscat, indicated as the terms of a settlement, stating that discussions had taken place with the applicant and with the understanding that the owner had indeed secured CDI as a tenant for the subject office building to operate as a *"trade like school to retrain adults only within two suites of the existing office building."*

He advised that pursuant to TLAB Rule 19.2, the City and the applicant had reached a settlement of the issues and requested jointly that the TLAB order an electronic hearing and administratively issue a decision on consent pursuant to Rules 19.3, 19.4, and 24, amending the COA approval and conditions and approving the following:

"That the TLAB allow the appeal in part, authorize the requested variance subject to the following revised conditions:

- ***The Committee of Adjustment's decision of approval shall be valid for a period of 54 months, expiring on May 1, 2024;*** (my emphasis)
- The educational use shall be restricted to a post-secondary adult training facility;
- The educational use (post-secondary adult training facility) shall be restricted to suites 202 and B4 with a maximum combined floor area of 696 m²."

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I note that Conditions 2 and 3, above recited, have not changed. The only condition that is revised is Condition 1, above highlighted, dealing with the length of tenancy in the subject building.

Mr. Muscat further advised in his letter that pursuant to the settlement arrangement, the City does not consider the revised approval and conditions to be a trial period for the use or an invitation for the owner to continue the use at the subject location beyond the revised time period. He confirmed that the applicant has been advised that it's the City's expectation that the applicant will seek a tenant to occupy the space after the expiry of the 4.5 years with a use that conforms to the OP and the relevant policy framework at that time.

Ms. Flynn-Guglietti submitted an email to the TLAB shortly thereafter (November 18, 2019) confirming the settlement arrangement agreed to with the City and requesting that the Tribunal deal with the disposition of this matter either in writing or an appearance in an expedited Settlement Hearing.

As the presiding Member and following a review of all of the materials in this matter, I directed TLAB staff to canvas the Parties for a Settlement Hearing date in advance of the scheduled Hearing on February 13, 2020.

On consent and given the request for an earlier disposition of the matter, the TLAB set a Settlement Hearing for December 17, 2019.

A Notice of Settlement Hearing was issued by the TLAB pursuant to Rule 19.3 and posted on the Tribunal's website. No one other than the Parties, above recited, attended the Hearing and the TLAB received no further responses.

MATTERS IN ISSUE

Notwithstanding the settlement, the TLAB must hear evidence in order to be satisfied that the variance meets the statutory tests. The reason is that the Hearing is a hearing *de novo*, as if the COA hearing was to be held afresh.

Therefore, the TLAB heard professional planning evidence to assess the acceptability of the sole variance being requested, and the associated conditions.

JURISDICTION

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

- maintains the general intent and purpose of the Official Plan;
- maintains the general intent and purpose of the Zoning By-laws;
- is desirable for the appropriate development or use of the land; and
- is minor.

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

In addition, the TLAB must have regard to matters of provincial interest as set out in section 2 of the *Act*, and the variance must be consistent with provincial policy statements and conform to provincial plans (s. 3 of the *Act*). A decision of the TLAB must be consistent with the 2014 Provincial Policy Statement (PPS) and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area (Growth Plan).

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

EVIDENCE

At the beginning of the scheduled Hearing on December 17, 2019, Ms. Flynn-Guglietti, McMillan LLP, counsel for the Applicant, and Mr. Muscat, counsel for the City of Toronto (City) advised that after significant discussions a settlement of the Appeal had been reached and the terms of the proposed settlement had been served on all Parties and filed with the TLAB.

The TLAB then heard professional land use planning evidence first from Mr. Jim Levac, the expert witness on behalf of the owners of the subject property, and from Ms. Rory McNeil, on behalf of the City.

Mr. Levac, of the consulting firm Glenn Schnarr & Associates, is an experienced planner having appeared before the TLAB on numerous occasions. In support of his evidence, the applicant filed a rather extensive Applicant’s Document Book consisting of an abbreviated, 5-page ‘*Outline of Evidence of Mr. Levac*’ document as well as his Curriculum Vitae and an Acknowledgement of Expert’s Duty (Form 6) contained within Tab’s 1 and 2, in a very extensive Applicant’s Document Book (Exhibit 1).

The remaining 8 additional Tabs included excerpts from various documents related to the matter (i.e., City staff reports, the Planning Act, PPS, Growth Plan, etc.).

He was qualified to give professional opinion evidence in land use planning. His evidence was presented in a very thorough and comprehensive manner; for brevity, I recite the salient points of his evidence below.

I advised that pursuant to Council’s direction, I had attended on the site and the surrounding area and reviewed the pre-filed materials but that matters of significance to individual variances needed to be brought forward in the evidence.

In addressing the provincial policy planning regime, Mr. Levac submitted that the proposal provides new employment opportunities in an area where they would otherwise not have existed, in turn benefiting the municipality through new job creation.

He specifically highlighted policies 1.2.6 and 1.3.1 of the PPS, and policy 2.2.5 of the Growth Plan and opined that the proposed use and the employment it generates will be appropriately contained within an existing, purpose built office building in the far

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perimeter of a designated Core Employment area and will have no impact on that area from a public health and safety perspective.

With respect to the statutory tests, he asserted that 'Industrial Trade Schools' are a permitted use in the *Core Employment Areas* (CEAs) designation in the City OP and reiterated his opinion that the proposed use will not disrupt inner core employment operations. He further asserted that the subject property is buffered to the north by a Hydro Corridor and few, if any, of the existing uses to the east along Ronson Drive extending to Kipling Avenue are traditional *Core Employment Areas* uses.

He concluded that the proposed use does not introduce a new sensitive use that could negatively impact the area and opined that the proposal does not constitute a conversion of employment lands; hence, it meets the general intent and purpose of the OP.

With respect to the second test, he asserted that since the application has been varied slightly to permit a 'Post-Secondary Adult Training Facility', the proposed conditions provided by the City and agreed to by the owners will ensure that the use is restricted to an adult training facility, will be limited in the area it occupies within the building and restricts the length of the use. Therefore, he opined that the use generally complies with the Zoning By-laws.

As to the test of desirable and minor, he opined that the proposed use will be located in an office building that has historically struggled with high vacancy levels, despite having excellent highway exposure, The proposal will, therefore, facilitate a tenant that will create new employment opportunities in an underutilized facility which he opined is desirable and an appropriate use for the land.

Furthermore, he opined that the location of the subject office building and the situation of the proposed use within that building will not create any unacceptable adverse impacts upon the surrounding employment area or the building, itself.

The City's expert witness, Ms. McNeil, is a planner in the Community Planning Division, Etobicoke York District. She is a relatively recent graduate in planning and a Candidate Member of both the Ontario Professional Planners Institute and the Canadian Institute of Planners.

Ms. McNeil also filed (although late) a Curriculum Vitae and Acknowledgement of Expert's Duty (Exhibit 2) and I qualified her to provide opinion evidence in the area of land use planning.

She was succinct but also comprehensive in providing her evidence and I commended her for that. Ms. McNeil noted that although she did not author the September 17, 2019 Planning staff comments to the COA she nevertheless concurred with and adopted the previous recommendation to refuse the variance.

She reiterated previous comments from Planning staff, noting that the OP states that uses that would attract the general public into the interior of employment lands and possibly disrupt industrial operations are not generally permitted in *Core Employment*

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Areas. Uses permitted in Core Employment Areas are set out in Policy 4.6.1 of the OP, as amended by the in-force policies of OPA 231.

She opined that the proposed use is neither an educational use nor a post-secondary adult training facility and neither is permitted in CEAs. Additionally, consideration to allow this type of use would be considered a conversion of land within an *Employment Areas* designation.

However, she confirmed that the proposal before the TLAB is improved as the Parties have now settled on a revised condition of approval. She opined that the agreed-to settlement terms allow the proposed use to locate within the subject office building only for a limited, temporary time period and in a limited area of the building. As a result, she opined that the proposal now meets the general intent and purpose of the OP and Zoning By-laws, is desirable and minor and can be supported by the City.

ANALYSIS, FINDINGS, REASONS

The TLAB is to consider conformity to provincial plans and consistency with provincial policy. There was nothing in the TLAB file, including the COA documentation, or the evidence heard that raised any issue on these matters.

The conditions to this settlement proposed by the City reflect a revision to one of those attached by the COA to its decision to approve the subject application. This revised condition, Condition 1, will result in a restriction in the length of time which the proposed use can be a tenant of the subject building, stipulating a period of 54 months.

The other two conditions result in the restriction of the education use to a specifically defined use, a 'post-secondary adult training facility', and where the use can be located within the building but to a maximum combined floor area (696 m²). This imposed size constraint limits the CDI operation to less than 5% of the overall floor area of the office building.

The TLAB is satisfied that the evidence presented by both Mr. Levac and Ms. McNeil, supports the finding that the variance is indeed minor and desirable and meets the intent of both the Official Plan and the Zoning By-laws.

As presented by Mr. Levac in his photo evidence and through aerial photography (Exhibit 1, Tab 2), the existing office building at 200 Ronson Drive is not located within the interior of the Employment Lands area and the proposed use will not disrupt the industrial operations as envisaged by the OP amended and in-force policies of Official Plan Amendment 231.

OPA 231 changed the permissions for employment areas to remove sensitive non-residential uses in order to preserve employment lands for dedicated business and economic activities, of primarily industrial character, and to bring City policies into line with the Growth Plan (2017).

He confirmed that the proposal would require no changes to the built form of the subject building.

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I note that although the property on which the subject building is located is zoned I.C1 (Class 1 Industrial) under the former By-law which does permit a wide range of educational uses, this zoning code was adopted prior to the City establishing the now prevalent protection of employment lands.

Both the PPS and Growth Plan identify that the conversion of employment lands within municipal employment areas is only permissible through municipally initiated Municipal Comprehensive Reviews, which is not the case in this matter. The City has a finite amount of employment lands which the Council had determined are to be preserved for business and economic activity uses. This is also the policy directive recently instituted through legislation at the provincial level.

The limited nature of the conditional approval of the subject proposal will ensure that it is not considered a conversion of employment lands - which would not be acceptable to the City.

The OP and the new By-law do not allow an education use as a permitted use. However, I agree that the limited time period and the limited space related to the proposed use within the building is supportable and meets the general intent and purpose of the OP and zoning By-laws.

I agree that the revised time limitation included in the new Condition #1 put forward by the City gives it time to monitor the use at this location in order to ensure that it does not create any further problems, within a more reasonable time frame than was previously conditionally approved by the Committee.

I believe the revision to the temporary time period proviso in Condition #1, and the other Conditions agreed to and being imposed represent a satisfactory compromise that will allow the owners to lease the identified floor space to CDI for a post-secondary adult training facility so that it can operate for the 54 months stipulated, after which the approval will expire.

For the reasons, above recited, I find that the variance and revised conditions meet all of the required tests in subsection 45(1) of the *Act* and conforms to and does not conflict with all applicable provincial policies.

Respecting the revision to Condition #1 as agreed to by the Parties, the TLAB concludes that it represents an improvement to the approval by the Committee, and thus is better reflective of the requirements of the Zoning By-laws. It more closely meets the test of 'minor'. Furthermore, the applicant has been advised that it is the City's expectation that the applicant will seek a tenant to occupy the space in question in the office building at and after the expiry of the 54 months agreed to, with a use that conforms to the Official Plan and the relevant policy framework in place at that time.

Given that a Notice of Settlement Hearing was issued by the TLAB and the Parties present were satisfied with the proposed terms of Settlement, the TLAB concluded that no further notice of the Hearing was required under Rule 19.3.

DECISION AND ORDER

The TLAB orders that the appeal is allowed applicable to the subject property, in part; the Committee of Adjustment approval decision is amended as follows, subject to the following modification(s).

The variance, below, is authorized, subject to the following conditions of approval, with Condition 1 **modified** as set out below.

REQUESTED VARIANCE TO THE ZONING BY-LAW:

Section 60.20.20.10.(1), By-law 569-2013

1. An Education Use is not permitted in an E 1.0 Zone.
To permit an educational use in the existing building.

CONDITIONS OF APPROVAL

- 1) The Committee of Adjustment's decision of approval shall be valid for a period of 54 months, expiring on May 1, 2024.
- 2) The educational use shall be restricted to a post-secondary adult training facility.
- 3) The educational use (post-secondary adult training facility) shall be restricted to suites 202 and B4 with a maximum combined floor area of 696 m²

As a result of this Decision, the scheduled Hearing date of February 13, 2020, is hereby vacated, and no attendance or further submissions are required.



D. Lombardi
Panel Chair, Toronto Local Appeal Body