

# DECISION AND ORDER

**Decision Issue Date**      Friday, December 20, 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): FILOMENA SCISCENTE

Applicant: PAUL STANEK

Property Address/Description: 160 THIRTIETH ST

Committee of Adjustment Case File: 19 171171 WET 03 MV

**TLAB Case File Number: 19 199310 S45 03 TLAB**

**Hearing date:**      Wednesday, December 04, 2019

**DECISION DELIVERED BY S. GOPIKRISHNA**

## APPEARANCES

Name	Role	Representative
Pual Stanek	Applicant	
Antonio Sciscente Limited	Owner	
Filomena Sciscente	Appellant/Primary Owner	James Ayres
Michael Tedesco	Expert Witness	
Maurice Luchich	Expert Witness	

## INTRODUCTION AND BACKGROUND

Antonio Sciscente and Filomena Sciscentre are the owners of the Public Garage located at 160 Thirtieth Street, located in Ward 3 (Etobicoke Lakeshore) . In order to maintain the existing garage, he applied to the Committee of Adjustment (COA) for approval of variances respecting the numbers of parking spaces, and the width of the minimum required drive aisle. The COA heard the application on July 18, 2019, and

refused the application in its entirety. The Applicants appealed the COA's decision to the Toronto Local Appeal Body (TLAB) on August 1, 2019, which then scheduled a Hearing on December 4, 2019. It may be noted that the Appeal to the TLAB was restricted to the variance respecting the minimum required drive aisle, because as information provided by the Appellants, the variance for parking spaces was no longer required.

## **MATTERS IN ISSUE**

### **Section 200.5.1.(3)(C), By-law 569-2013**

The minimum required drive aisle width for the site is 4 m.  
The existing drive aisle width is 3.17 m.

### **Provincial Policy – S. 3**

A decision of the Toronto Local Appeal Body ('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').

### **Minor Variance – S. 45(1)**

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

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

## **EVIDENCE**

At the Hearing held at the TLAB on December 6, 2019, the Appellant were represented by Messrs James Ayres and Scott Lemke, both of whom are lawyers, Mr. Maurice Luchich, a planner, and Mr. Michael Tedesco, a traffic engineer. It is important to note that there were no other Parties, nor Participants, involved with this proposal.

Mr. Ayres made a brief opening statement, where he discussed the chronology of the case, and why his clients had to request the COA for relief from the By-laws. He emphasized the fact that a variance was no longer requested for the parking variance.

Mr. Maurice Luchich was then recognized as an Expert in the area of land use planning, and began with a brief description of the Subject Site.

The Subject site is located on the west side of Thirtieth Street, south of Alhena Avenue. The site is legally described as Lots 15, 16, 17 & 18, PL 2140, Etobicoke, City of Toronto and has an area of approximately 0.19 hectares (0.47 acres), frontage of

approximately 61 metres, and a depth of approximately 41 metres. The subject site contains an existing one-storey building constructed in 1985 of approximately 682 sq. m. divided in to two units - Unit 'A' and 'B'. Unit A is occupied by Shocks and Thangs and Unit 'B' is occupied by Euromotion Motorcar Services. The existing building has a front yard setback of 7.42 metres, and a southerly interior side yard setback of 2.84 metres, and a northerly interior side yard setback of 6.08 metres. Vehicular access to the Subject site is provided by way of two existing asphalt driveways connecting directly from Thirtieth Street.

Mr. Luchich said that the Subject site is located in a large, predominantly industrial employment neighbourhood. He added that Thirtieth Street specifically contains a mix of existing residential, commercial, and industrial uses, some of which are interspersed between residential built forms. Considering the industrial area zoning and planned context, he said that, it is presumed any surrounding residential dwellings used for residential are non-conforming uses.

The lands within the immediate context of the subject property consist of a variety of residential, and industrial/commercial uses. According to Mr. Luchich, Thirtieth Street is lined with primarily detached dwellings on both sides of the street from Horner Avenue to Alhena Avenue, and that it is evident that some of these dwellings are used for non-residential uses such as 184 Thirtieth Street (ACE Tree Services), and 191 Thirtieth Street (Southside Customs). South of Alhena Avenue there are various forms of residential dwellings on the east side of Thirtieth Street, with industrial uses on the west side, and intermittent, with residences down to the rail line. Many of these houses back on to properties used for various industrial uses.

The Site context is subject to the same zoning regulations under City-wide By-law 569-2013 that applies to the subject site (i.e., "E 1.0"), save and except for approved site-specific minor variance applications. Mr. Luchich highlighted that the purpose of the Employment Industrial (E) zone is to provide areas for general manufacturing, industrial and other employment uses that co-exist in relatively close proximity to other manufacturing and industrial uses without major impacts on each other. In other words, the existing residential buildings and lots are governed by an employment zone and could be converted to uses similar to those allowed under the zoning provisions for the subject lands. Mr. Luchich then described some of the businesses in the vicinity on Alhena Avenue, and Akron Road, interspersed with various residential buildings- he described the interspersing of industrial businesses, and residential dwellings as a being unusual feature of this area.

Mr. Luchich then spoke about the compatibility between the proposal, and the Higher Level Policies, such as Growth Plan for the Greater Golden Horseshoe (2019). He said that the proposal conforms to the Growth Plan, in particular policies under Section 2.2.5, including polices on the Provincially Significant Employment Zones, and concluded that the proposed minor variance will allow a use to continue where it is permitted

Mr. Luchich then discussed how the proposal maintained the intent and purpose of the Official Plan. He re-emphasized the fact that the Subject Site is zoned *Core Employment Areas* (Section 4.6) in the Official Plan.

*Core Employment Areas* are places for business and economic activities. Uses permitted in *Core Employment Areas* include all types of manufacturing, processing, warehousing, wholesaling, distribution, storage, transportation facilities, vehicle repair and services, offices, research and development facilities, utilities, waste management systems, industrial trade schools, media, information and technology facilities, and vertical agriculture. Mr. Luchich also added that the Subject Lands are not subject to any Site and Area Specific Policy No. (“SASPs”).

Mr. Luchich said that the Official Plan supports a full range of employment uses, and stated that employment areas are important, and comprise the City's 'employment areas' as defined under the Provincial Planning framework. Furthermore, the Official Plan states that Core Employment Areas are, for the most part, geographically located within the interior of employment areas. He recited extracts from Section 4.6 that discussed what factors would contribute to the creation of competitive, attractive, highly functional Employment Areas, and reiterated the Official Plan's acknowledgment that the Zoning By-law is the key planning tool for implementing the policies directions for new development.

The proposed reduced aisle width, according to Mr. Luchich, fulfills the conditions specified in Policy 4.6 through:

- Allowing for the existing employment uses to be maintained, providing jobs for local residents , as well as service to other employment uses
- Not detrimentally impacting the function or use of immediately surrounding employment lands
- Allowing for the passage of vehicles within the limits of the site to access the rear parking for Units A and B and service entrance for Unit B thus reducing the visual impact of parking areas on-street
- Proposing an operational condition (two-way/single lane) which is observed in other employment locations

Based on the above discussion, Mr. Luchich concluded that the requested variance upheld the general intent, and purpose of the Official Plan.

Mr. Luchich next discussed how the requested variance upheld the general intent, and purpose of the Zoning By-Law, which is to establish zoning regulations, to regulate on-site uses and to consider requirements to neighbouring properties.

Typical City Zoning By-laws regulate the movement of vehicles through a site by specifying various aisle widths. These regulations are provided to ensure vehicles can access parking, ingress/egress points and/or features of the site or building. These regulations can specify one-way or two-way traffic requirements .

Mr. Luchich then noted that the City's Transportation Services Road Engineering Design Guidelines (June 2017) under Section 2.0 Lane Widths Guidelines note that a typical public City road, through lane, or turning lane minimum and target design width is 3.0 m. According to Mr. Luchich, the assumption for a lane with a four metre width is that it would be suitable to accommodate a vehicle moving at design speeds from under 40

km/hr up to 50 km/hr. He then pointed out that the only drivers accessing the Site are the garage staff who are aware that the ingress, and egress pathway is 3.17 m wide, as opposed to the normal 4 m. He suggested that these individuals, who receive specific training, and have specific knowledge, can be relied upon to drive at a slower speed ( 20-25 km), and exercise caution, as they drove through the narrow turning lane.

Mr. Luchich then drew attention to the fact that the reduced aisle condition has been approved by the COA, with appropriate references to application numbers, for a site across the street from the Subject lands at 157 Thirtieth Street. He then briefly narrated the history of the site at 157 Thirtieth Street, which was the result of a land severance to create two industrial lots, with associated minor variance applications. As a result, each new lot, and associated building will share a mutual driveway providing access to parking in the rear. The overall width of the aisle serving two buildings, is 2.6 m. Based on this evidence, Mr. Luchich concluded that the proposed aisle reduction variance maintains the general intent and purpose of the Zoning By-law 569-2013.

Mr. Luchich then discussed the compatibility between the proposal, and the test of desirable, and appropriate for the development of the land. He pointed out that the proposed minor variance will facilitate the maintenance of the existing land use without any major changes to use or function of site. From a land use perspective, the proposed aisle width minor variance allows for a formal vehicular access to the rear of the subject property. This will be enforced through the City's conditions of approval requiring a plan indicating layout changes that satisfy staff comments. The subject site needs to be self-sufficient to provide on-site access to parking and service locations for both vehicle repair units. This is a desirable condition for the long-term usability and function of these lands.

Mr. Luchich also referred to the Memorandum from the City's Transportation Staff, who recommended the use of signage, to regulate the movement of vehicles in this area. This signage is meant to ensure a rational treatment of vehicular movements by users of this aisle width, with typical signage seen throughout other locations in Toronto, or beyond. These conditions are appropriate and will ensure the safe and easy use of this aisle area on the subject site. He then provided examples of similar conditions that existed across the street, at 157 Thirtieth Street, and 148 Thirtieth Street, and how the operation of the facilities at those sites continued to operate smoothly.

Based on this discussion, Mr. Luchich concluded that the proposal satisfied the test of desirable and appropriate for the development of the land.

Turning to the test of the development being minor, he said that the proposed reduction in aisle width is minor considering the City Zoning standard is based on private and typically slower traffic than as seen on public roads. As noted above, the City's lane width guidelines allow for traffic on 3.0 m and thus the viability of traffic movements on the subject lands under conditions with slow moving vehicles driven by site employees with the proposed aisle width reduction is acceptable. The proposed minor variance does not have any impact on adjacent properties including area residents or employees. The minor variance impact is minor as it only impacts on-site users such as employees who will be repeatedly using this aisle area for the daily operation of their businesses. Based on this, he concluded that the proposal satisfied the test of minor.

Mr. Luchich concluded that the proposal satisfied all the four statutory tests under Section 45.1. He then discussed the conditions to be imposed, as recommended by the City of Toronto's Transportation. He also recited the conditions suggested by the City's Transportation Department in their memo dated July 15, 2019, and recommended that they be imposed on the Settlement:

- a) The site plan must be revised to clearly show the sign design of the required "Yield to Oncoming Traffic" and "Slow-Proceed with Caution" signs and their exact locations;
- b) The site plan must be revised to illustrate the parking layout that matches the description of parking space locations in the January 11, 2019 Zoning Notice;
- c) The site plan must be revised to illustrate that all portion of existing redundant driveways and associated curb cuts within the Thirtieth Street municipal boulevard will be removed and restored with sod or soft landscaping and curb and gutter in accordance to applicable City of Toronto Design Standard.
- d) The site plan must be revised to include the following notations:
  1. "All portions of existing redundant driveway and associated curb cuts within the Thirtieth Street municipal boulevard that are no longer required shall be removed and restored to the satisfaction of the Transportation Services Division and at no cost the municipality.";
  2. "The proposed new driveway shall be constructed to the applicable City of Toronto Design Standard(s).";
  3. "The applicant must submit a Municipal Road Damage Deposit (MRDD) for the project prior to commencing construction.";
  4. "The applicant must obtain all required permits from the Right-of-Way Management Section of Transportation Services."
- e) The above-mentioned design revisions shall be illustrated to the satisfaction of Transportation Services

I thanked Mr. Luchich for his presentation.

Mr. Michael Tedesco was then sworn in, and recognized as an Expert Witness in the area of traffic engineering. Mr. Tedesco briefly discussed the various options he had looked at while brain storming to find a solution, before determining that the option of reducing the width of the drive in aisle from the road to the back of the property was the optimal solution. When asked what the most acute issue would be, Mr. Tedesco said that this was when two cars had to cross each other on the narrowest point on the path, and proceeded to demonstrate how this could lead to situation where the cars could not simultaneously be on the road. Mr. Tedesco reviewed how the exclusive use of employees with special training could resolve this issue through adhering to the principle of not having more than one vehicle on the road at any given point in time. He added that under such situations, the preference would be given to the driver going to

the back of the property, rather than the driver exiting the site. When asked what tests did his evidence corresponded to, Mr. Tedesco said that his evidence corresponded to the test of minor. He said that he concurred with Mr. Luchich that the proposal should be approved.

Based on this information, Mr. Tedesco asked that the Appeal be allowed, and his clients be allowed to legalize the width of the driveway, and associated parking conditions, so as to comply with the new City-wide Zoning By-law No. 569-2013.

I reminded the Party that it would be appropriate for any Decision and Order from the TLAB, to link the development to a Plan, and was assured that appropriate wording, with a copy of the Plan, prepared by Glen Schnarr and Associates, would be emailed later.

I thanked the Party, and the Witnesses for their evidence, and informed them that I would reserve my decision. The suggested wording, with a copy of the Plan that had earlier been discussed by Messrs Luchich, and Tedesco, was received by the TLAB on December 8, 2019, and is reproduced below:

*The minor variance application be approved, subject to the conditions noted in the City of Toronto Transportation Services Memorandum dated July 15, 2019 (see tab 24 of the Document Book of the Expert Witness, Maurice Luchich), and substantially in accordance with the City Traffic Approval Plan, prepared by Glen Schnarr & Associates Inc., dated October 9, 2019 (see tab 35 of the Document Book of the Expert Witness, Maurice Luchich).*

## **ANALYSIS, FINDINGS, REASONS**

It is important to note at the commencement of my analysis that this case is unusual in that it involves no Parties, nor Participants, other than the Appellants. It is also interesting to note that the City of Toronto took no position, on this Appeal, notwithstanding the history of this case, and it being located in an area earmarked for Employment purposes- the City's participation was limited to the active involvement of the Department of Transportation, which recommended conditions, should the proposal be approved

The evidence presented was fulsome, and answered all my questions- notwithstanding the granularity of the proposal, Mr. Luchich addressed higher level policies, and stated how the proposal was consistent with the Growth Plan (2019). He explained the importance of Policy 4.6, before describing how the proposal satisfied the intent and purpose of the Policy- I am in agreement with him that the proposal satisfies the Official Policy.

Mr. Luchich then discussed the test of how the proposal upheld the intention of the Zoning By-Law. In the description provided, he drew my attention to the assumption about how a vehicle driving in at 50 km/hr, would require an access path four metres wide. He then described how a velocity of 25-30 km/hr, and with a trained driver at the wheel of the car, would not require an access path more than 3.17 m wide.. On the

basis of this evidence, and similar instances at other Sites in the vicinity ( i.e. 157 Thirtieth street), I agree with Mr. Luchich that the proposal satisfies the test of upholding the intent of the By-Law, which is to establish zoning regulations, to regulate on-site uses and to consider requirements to neighbouring properties.

I am in agreement with Mr. Luchich about the test of appropriate development, because the subject site is self-sufficient to provide on-site access, to parking and service locations for both vehicle repair units. This is a desirable condition for the long-term usability and function of these lands.

Lastly, the test of minor is satisfied because there is no demonstrable impact on the neighbours, and not certainly of an unacceptable adverse nature. Mr. Tedesco illustrated the worst situation of two cars trying to pass each other, occurring under the circumstances, and the precautionary measures put in place to address the same. I am satisfied that there are enough precautions to prevent damage to the clients, and therefore deem the proposal to have met the test of minor.

On the basis of this, I find that the proposal meets the tests under Section 45.1

The measures suggested by the City, as recited by Mr. Luchich, are thoughtful, and in the public interest, through minimizing localized risk. On the basis of these observations. I find that the Appeal should be allowed, since the proposal has satisfied all 4 tests under Section 45.1

## **DECISION AND ORDER**

1. The Appeal respecting 160 Thirtieth Street is allowed, and the Decision of the Committee of Adjustment respecting the same property, dated June 15, 2019, is now set aside.
2. The following variance is approved:

### **Section 200.5.1.(3)(C), By-law 569-2013**

The minimum required drive aisle width for the site is 4 m.

The existing drive aisle width is 3.17 m.


3. The following conditions are imposed on the approval:
  - a) The site plan must be revised to clearly show the sign design of the required “Yield to Oncoming Traffic” and “Slow-Proceed with Caution” signs and their exact locations;
  - b) The site plan must be revised to illustrate the parking layout that matches the description of parking space locations in the January 11, 2019 Zoning Notice;
  - c) The site plan must be revised to illustrate that all portion of existing redundant driveways and associated curb cuts within the Thirtieth Street municipal boulevard will be removed and restored with sod or soft landscaping and curb and gutter in accordance to applicable City of Toronto Design Standard.
  - d) The site plan must be revised to include the following notations:



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1. "All portions of existing redundant driveway and associated curb cuts within the Thirtieth Street municipal boulevard that are no longer required shall be removed and restored to the satisfaction of the Transportation Services Division and at no cost the municipality.";
  2. "The proposed new driveway shall be constructed to the applicable City of Toronto Design Standard(s).";
  3. "The applicant must submit a Municipal Road Damage Deposit (MRDD) for the project prior to commencing construction.";
  4. "The applicant must obtain all required permits from the Right-of-Way Management Section of Transportation Services."
- e) The above-mentioned design revisions shall be illustrated to the satisfaction of Transportation Services
4. The minor variance application be approved, subject to the conditions as recited above- these conditions are consistent with the Memorandum dated July 15, 2019, from the City of Toronto's Transportation Services. The approval requires substantial conformity with the City Traffic Approval Plan, prepared by Glen Schnarr & Associates Inc., dated October 9, 2019, which is attached to this Decision.

So orders the Toronto Local Appeal Body

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S. Gopikrishna  
Panel Chair, Toronto Local Appeal Body