

DECISION

Decision Issue Date Thursday, May 21, 2020

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Applicant SSQ, SOCIETE D'ASSURANCE-VIE INC THE BIGLIERI GROUP LTD

Property Address/Description: 110 SHEPPARD AVE E

Committee of Adjustment Case File: A0616/19NY) 19 225619 NNY 18 MV

TLAB Case File Number: 19 250930 S45 18 TLAB

Hearing date: Wednesday, April 22, 2020

DECISION DELIVERED BY T. YAO

APPEARANCES

NAME	ROLE	REPRESENTATIVE
SSQ, Société D'assurance-Vie Inc The Biglieri Group Ltd	Party/Owner	Andy Margaritis
Mike Pettigrew	Expert Witness	

INTRODUCTION

SSQ, Société D'assurance-Vie Inc wishes to lease a portion of the ground floor of 110 Sheppard Ave to a private school tenant (Mackenzie Academy). The site's zoning does not permit this use. On November 7, 2019, the Committee of Adjustment agreed to SSQ's request, but imposed a two year limitation, to expire in November 2021. SSQ appealed to the TLAB and because an appeal returns the process to the starting point, SSQ is required to prove its entire case from scratch; not just the two year limitation.

Table 1. Variance sought from site specific Zoning By-law 28182 (former City of North York)	
	Proposed
	Permitted uses for Parcel 4 alone
	Commercial school, restaurants, retail stores, service shops, personal service shops, business and professional offices, professional medical offices, studios, dry-cleaning and laundry collecting establishments, theatres, taverns, commercial clubs, commercial recreational facilities, day care centres, outdoor cafes, a podium and accessory uses.
	Private School

MATTERS IN ISSUE

The variances must meet all four tests under s. 45(1) of the *Planning Act*. that is, whether they individually and cumulatively:

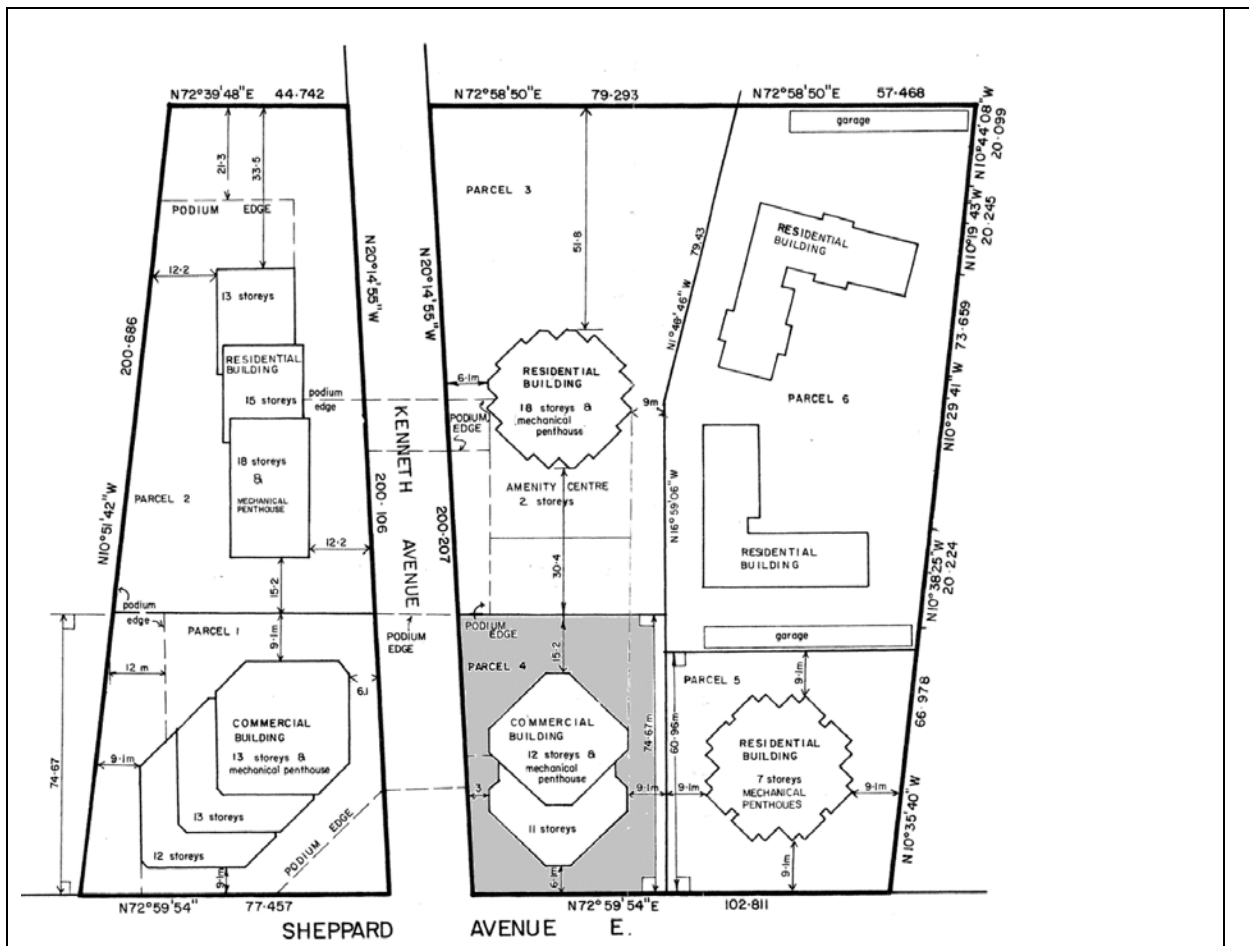
- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

Bullet 1 refers to “the Official Plan”, which includes a more specific official plan document, the North York Centre secondary plan, with more detailed policies for the Yong Street corridor between Sheppard and Finch. Section 2.2 of the “main” Official Plan specifically refers to the North York Centre secondary plan and its policies to create a “sustainable transportation network” and animation on sidewalks of arterial roads, such as Sheppard Ave.

Bullet 2 refers to the zoning by, which in this case is not the comprehensive City - wide Zoning By-Law 569-2013, but rather a site-specific former City of North York Zoning By-law, 28182, enacted in 1982, before amalgamation.

In addition, the variances must meet higher level Provincial policies. SSQ's position was that either these policies are not applicable or that if they are, the application complies. I agree with the first position because I do not think Province-wide policies are intended to extend to the granular level of a portion of a building.

In the end, I find in favour of SSQ's appeal.



EVIDENCE

This is a “written hearing” to obviate the need for a congregation of persons during the mandatory shutdown of non-essential workplaces due to the Covid-19 pandemic. The evidence consisted of prefiled documents, an audio tape by SSQ’s planner, Mike Pettigrew, and written submissions by SSQ’s lawyer, Andy Margaritis. I qualified Mr. Pettigrew as able to give evidence in the area of land use planning.

ANALYSIS, FINDINGS, REASONS

The context and neighbours’ objections

The private school is to be located on the ground floor of the parcel (parcel 4) at the corner of Kenneth and Sheppard (1982 site plan previous page). Many residents wrote to oppose the granting of the variance on grounds that it would increase traffic and illegal stopping etc. There were also complaints about loitering, littering and smoking, but traffic was the most important issue:

Both of us are opposed to the city allowing yet another school into our immediate area. We already have several that we have to deal with, the students at Earl Haig being the worst offenders. Students, as well as parents picking them up and dropping them off, DO NOT obey traffic rules. (Ross and Diana Davies; letter to the Committee of Adjustment, Oct. 27, 2019)

Mr. Pettigrew explained to me that Mackenzie's (the tenant)'s high school-aged students would likely be too young to drive. The other issues were could be handled by direct dialogue with the property manager. I considered the traffic issue carefully, even though no one reiterated those concerns to the TLAB, either in writing or orally. I considered:

- The City's Traffic Planning/R-O-W Management has reviewed the proposal. It is in possession of detailed traffic counts and expected traffic generation numbers and has not commented;
- Ms. Davies' comment reflects illegal behaviour on the part of parents of Earl Haig students, which is a by-law enforcement issue, not a land use planning one;
- Earl Haig has over 2000 students whereas the proposal will have 50 students and 6 faculty;
- Parcel 4 has enough room for a drop off maneuver entirely on site, if necessary;
- As the program is directed to students who are not Canadian citizens, it is likely that many of the students' parents do not reside in Toronto and thus are not in a position to drive them to school;
- After the Committee decision Ms. Sally Guston reached out to SSQ and an informal meeting was held between Mr. Pettigrew, SSQ's property manager and some residents of 5 and 10 Kenneth;
- Once reasonable evidence is brought forward, the onus shifts to the other side, and there was no one to rebut this evidence.

Therefore, I do not consider that alleged drop off and pickup congestion is an obstacle and I will now go on to examine the four tests.

The Official Plan

This site is designated "mixed use", which permits commercial, residential, institutional; especially those supportive of public transit. Section 4.5.2 of the Official Plan states:

2. In Mixed Use Areas development will:

g) have access to **schools**, parks, community centres, libraries and childcare; h) take advantage of nearby transit services; (my bold)

Educational facilities, being institutional, are strongly supported in this mixed use area, just as residential is supported. The plan also places great emphasis on reducing car use, which will be promoted by a location 500 m from a subway station. Accordingly, I find the intent of the Official Plan will be maintained.

The Zoning

Commercial schools are permitted; that is, trade schools and dance studios, and commercial schools are **not** regulated by the Ministry of Education. Public and private schools offer accredited courses; and so, these schools **are** regulated. The drafters of the by-law, reasoning that the Minister of Education will set out regulations, did not include private schools in the list of permitted uses. For land use planning purposes, particularly when the built form is already in existence, there is little difference whether a student within the building will study mathematics or dance.

Any number of the permitted uses (e.g. day care, medical offices, theatre) could lead to extensive additional cars coming to the building, which is discouraged by the Official Plan.



There are eight other schools located within a four block radius, as noted by the Davies family (Earl Haig is outside this area). Please see Mr. Pettigrew's map, previous

page. Except for IBT, this is the closest to the subway and is comparatively modestly sized.

I find the intent of the zoning by-law is to include a variety of commercial institutional and office type uses to enhance the complete community envisioned in the Official Plan and that a private school at this location meets this intent.

Desirability

Mr. Pettigrew stated that extensive renovations would be needed to meet the regulatory requirements of the Ministry of Education. After this, SSQ and Mackenzie would have at best one year of operation before the November 2021 termination of permission. A student typically would require four years to complete her matriculation and would hesitate to enroll in a school which might have to close its doors after a year. The condition was imposed without discussion or any suggestion by City Planning staff or neighbouring residents. It is obviously unworkable and does not represent development that is desirable for the appropriate development of the land and building.

Despite its accessibility and visibility, Mr. Pettigrew stated that the ground floor has been vacant for years and has proven to be difficult to rent. For this reason, the application meets the test of desirable development.

Minor

As set out in the previously there will be no other change than a sign and internal renovations and a change in subjects of study. I find the application is minor.

Conclusion

I find all the statutory tests are met.

ORDER

I authorize that a private school use is permitted on Parcel 4, without conditions or limitations.

X



Ted Yao
Panel Chair, Toronto Local Appeal Body