

## DECISION AND ORDER

**Decision Issue Date** Thursday, April 09, 2020

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: DESIGN PLAN SERVICES

Property Address/Description: 103 RAILSIDE ROAD

Committee of Adjustment Case File: 19 219162 NNY 16 MV

**TLAB Case File Number: 19 248671 S45 16 TLAB**

**Hearing date:** Friday, March 20, 2020

**DECISION DELIVERED BY JUSTIN LEUNG**

### APPEARANCES

NAME	ROLE	REPRESENTATIVE
Design Plan Services	Applicant	
Landrich Investments Inc	Owner	
City of Toronto	Appellant	Derin Abimbola
Vince Pagliuca	Party	
TJ Cieciora	Expert Witness	

## **INTRODUCTION**

The Appellant, the City, appealed the decision of the Committee of Adjustment (COA) relating to a proposal allowing an existing building space to be converted for vehicular sales, located at 103 Railside Road Subject property). To facilitate this proposal, a variance was applied for. This variance was heard and approved at the Thursday, October 23, 2019 North York District COA meeting.

The subject property is located in the Victoria Village neighbourhood in the former City of North York.

The other party in this matter is Vince Pagliuca, the tenant for this subject property and proposed operator of this vehicular sales centre. He does not have legal representation but does have a planning consultant which is the applicant, Design Plan Services. The landlord of this property is Landrich Investments Inc.

I visited the subject property and the surrounding neighbourhood prior to the hearing to familiarize myself with the area and reviewed all pre-filed materials in preparation for the hearing.

Prior to the hearing, the parties informed TLAB that that they reached a settlement. As such, the hearing proceeded as a settlement hearing to determine whether the terms of settlement satisfied the statutory criteria for a variance.

## **MATTERS IN ISSUE**

The City had filed an appeal on this matter in response to the approval of the below noted variance by the COA.

### **1. Chapter 60.20.20.10.(1), By-law No. 569-2013**

The proposed Vehicle Dealership use is not a permitted use in the E Zone.

The previous City Planning report outlined its contention that both the related Official Plan (OP) and Zoning By-law uses and regulations do not permit an vehicle dealership for these subject lands. The underlying rationale of Planning staff's position on this matter is described herein:

“As vehicle dealerships are a retail and service use, Planning staff are of the opinion that permitting this use on the subject property would attract the general public into the interior of the Railside Road employment area and potentially disrupt existing industrial operations.”<sup>1</sup>

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<sup>1</sup> City of Toronto (2019, October). Staff Report: Committee of Adjustment Application: 103 Railside Road. Retrieved from <http://app.toronto.ca/AIC/index.do?folderRsn=4xzNNxA9aC6LJJ09sxC3A%3D%3D>

While such comments were provided by the City, the COA, after deliberating, elected to approve the application. Due to this, the City decided that it would file an appeal as a means of defending municipal policies as they pertain to employment areas.

Prior to the scheduled hearing, both parties (City and the tenant) indicated that they had engaged in additional discussions and had reached a settlement on the matter. As such, I directed that the hearing be converted to a teleconference as can be appropriate for the disposition of settlements.

Both parties further indicated that as part of the proposed settlement, that they had agreed upon a set of conditions to be imposed to this variance application. These conditions have been proffered to the Toronto Local Appeal Body (TLAB), for its review and consideration.

## **JURISDICTION**

### **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**

Derin Abimbola, legal counsel for the City of Toronto, commenced the teleconference advising that the City and the party/applicant had reached a potential settlement or resolution for the matter at hand. The City Planner, Aileen Kang, was present and could provide additional information or clarifications to the TLAB if necessary. Ms. Abimbola briefly outlined that the discussions with the party/applicant had been fruitful and, at this juncture, the City was willing to withdraw their objections to the proposal so long as the proposed conditions of approval were imposed by the tribunal.

TJ Cieciora, of Design Plan Services, identified himself as the planning consultant for the tenant of this subject property. Mr. Cieciora notified the TLAB that his client did not have legal representation. As such, Mr. Cieciora was present to only provide planning related testimony if deemed necessary by the tribunal. He requested that the TLAB access Section 5.6 of his Expert Witness Statement to find 4 conditions which he and the City had agreed were satisfactory to enable this vehicle dealership use to be permitted in this area and on the subject property. The conditions detail that vehicle dealership will be the principal use of the site while vehicle sales will be secondary, that only a small defined number of outdoor parking spots may be used for the storage of vehicles for sale, vehicle sales can only occur by appointment, and that vehicle sales office space be used only in the areas as defined in the related drawings which had been submitted to the COA for its review. When I asked about how this use would interface with other established businesses of the area, Mr. Cieciora responded that, in his professional opinion, this use would not conflict and that the proposed conditions would ensure that the vehicle sales uses would not become the predominant feature of this property. He further contended that although this area was designated as employment uses, a diverse range of uses had begun to appear in the area and this had not acted to disrupt the established urban fabric.

## **ANALYSIS, FINDINGS, REASONS**

With the material as presented before me, I have chosen to accept Mr. Cieciora's testimony and have assessed it in relation to the four tests. The conditions which he has proposed act to address concerns which the City had initially had with this proposal. Furthermore, the proposal will allow for continued business activity in this area.

Most notably, the conditions act to restrict the number of parking spaces which can be used by vehicle sales and the site plan, showing defined office space which can be used for vehicle sales, demonstrates that vehicle sales will not be provided a means by which it can become the dominant use on the site. The vehicle repair function will continue to be the principal use at this subject property. The vehicle sales here will not be provided an environment by which to further develop into a more fulsome vehicle dealership, such as the Tesla dealership, situated on the nearby major thoroughfare of Lawrence Avenue East.

The other two conditions: vehicle sales can only occur by appointment only and that the vehicle sales use is to be ancillary to the vehicle repair use, further act to constrain the vehicle sales function as proposed for this site by ensuring that there won't be more substantial public traffic to the property - which a traditional vehicle dealership typically attracts. In addition, dealerships typically are situated along major thoroughfares. The location of this vehicle sales centre on a more localized street acts to decrease its prominence to the public further reducing public traffic here. An appointment system as proposed by the conditions also ensures that persons attending the site can be regulated and controlled by the tenant. Larger scale vehicle sales volumes would also be constrained as a result. The other condition and its commitment that vehicle repair remain the primary use of the site provides certain security to the

vehicle repair shop to continue to operate while alleviating concerns that the vehicle sales could potentially evolve to become the new principal use. Within this dynamic, it is found these 4 conditions, cumulatively, provide the City the measures which act to defend the overall public interest.

While recognizing that the COA ultimately chose to permit this use here, the City has engaged with the applicant to provide a means by which this use can exist while minimizing its impact on the immediate neighbourhood. The conditions also serve to address issues or conflicts which have emerged as they relate to municipal policies.

Based on the evidence before me and based on the submissions of the Appellant's counsel, I am satisfied that the variances, along with the imposed conditions, meet policy considerations and the four tests for variance. The parties have engaged in constructive dialogue to achieve a revised proposal which is more appropriate for the neighbourhood context. Furthermore, the TLAB's general practice direction is to encourage mediation and settlement amongst the interested parties -as is achieved in this instance.

## DECISION AND ORDER

The variance to permit Vehicle Repair Shop and ancillary Vehicle Dealership on the subject property is approved subject to the conditions listed in Attachment 1.

X



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Justin Leung  
Panel Chair, Toronto Local Appeal Body

**Attachment 1**

Conditions of Variance Approval

1. Use- The vehicle repair shop and vehicle dealership will operate simultaneously on site, with the vehicle repair shop being the primary use and the vehicle dealership will be the ancillary use;
2. Parking spots- Out of approximately 80 outdoor parking spaces, a maximum of 15 spaces can be for car display-as shown on the attached site plan;
3. Car sales will be by appointment only; and
4. Office space uses for car sales will be substantially according with the attached floor plan.
5. Site Plan (Condition 2) and Site Floor Plan (Condition 4) are attached herein.