

DECISION AND ORDER

Decision Issue Date **Monday, November 30, 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): 1281121 ONTARIO LIMITED

Applicant: 1281121 ONTARIO LIMITED

Property Address/Description: 613 DUPONT ST

Committee of Adjustment Case File: 19 246223 STE 11 MV

TLAB Case File Number: 20 117262 S45 11 TLAB

Hearing date: Friday, November 20, 2020

DECISION DELIVERED BY STANLEY MAKUCH

APPEARANCES

Name	Role	Representative
1281121 Ontario Ltd.	Applicant/Owner/Appellant	Charles Gerber

INTRODUCTION

This is an appeal by 1281121 Ontario Ltd. owner of property known as 613 Dupont St. upon which has been reconstructed a three story residential building. The appeal is from a decision which approved a variance to allow offices uses on the main floor and in the basement but refused the following uses: retail stores, personal service shops and a wellness centre on those floors. The top two floors are to be used for residential purposes.

BACKGROUND

No one appeared in opposition to the appeal. The owners of 1281121 Ontario Ltd., Charles Gerber and Catevik Makhlina, appeared in support of the appeal and both gave evidence. The property is on a major street across from a large Loblaws supermarket parking lot and to its rear is a residential neighbourhood. To the east are retail uses and to the west is an equipment rental establishment.

MATTERS IN ISSUE

The only matter in issue is whether the additional uses of retail stores, personal service shops and a wellness centre should be permitted. No change to the appearance of the property is required. The Committee of Adjustment decision granted a variance permitting office uses only on condition that no other commercial uses be allowed.

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

The witnesses gave evidence that planning department staff had supported the proposed variances to permit all the requested uses until two days before the Committee of Adjustment hearing. At that time, they were told by staff that only one use could be supported and that the applicant should choose which one they wanted. A letter sent to the Committee two days before the hearing stated that staff would only support one use and had worked with the applicants so that use would be office uses.

Staff noted in the letter that Official Plan Policy 4.1.3 provides that on a major street in an area designated Neighbourhoods new small scale retail services, and office uses are permitted as long as they do not adversely impact on the adjacent residential uses. They gave no reasons as to why the personal service shops, retail stores or wellness centres would adversely impact on the neighbouring residential use.

The witnesses testified that planning staff's position was that they simply wanted to support one use only and that the owners should seek a further variance if an additional use was desired and it would be supported. However, the witnesses were attempting to rent the premises and needed all the uses requested in order to appeal to

as wide a market as possible in their attempt to rent the premises. They were also concerned about the cost of seeking additional variances.

The only other evidence was a letter from a neighbouring property owner which did not address the impact of the proposed uses directly and basically asked a number of questions.

ANALYSIS, FINDINGS, REASONS

I find the appeal should be allowed and all of the variances set out in Appendix 1 should be granted without condition. Planning staff gave no clear reason for not supporting the additional uses. The total usable space available is approximately 600 square feet and it is unlikely there will be multiple uses at the same time. I agree that requiring an additional variance in the future to permit a different use which would then result in a condition removing an already permitted uses would impede the marketability of the property and is not required by the Official Plan. There is no change in the appearance of the building and I find that the additional uses do respect and reinforce the character of the neighbourhood which has a thriving commercial aspect on the south side of Dupont St. opposite the Loblaws store and parking lot. There is no persuasive evidence that the additional uses would adversely affect the residential neighbourhood.

I find the variances are consistent with and conform to the PPS and Growth Plan. They also meet the four tests of the Planning Act since: they meet the general intent of policy 4.1.3 of the Official Plan as stated above; meet the general intent of the zoning bylaw to prevent adverse impacts and there are none; they are appropriate for the use of the property which is in a commercial area on a major street; and are minor additional uses given the size of the space available for the uses.

DECISION AND ORDER

The decision of the Committee of Adjustment is set aside; the appeal is allowed, and the variances set out in Appendix 1 are approved without condition.

X 

S. Makuch
Panel Chair, Toronto Local Appeal

APPENDIX 1

Chapter 10.10.20.10.(1), By-law 569-2013 Personal service shops, retail stores, wellness centres and office uses are not permitted in the Residential (R) Zone. In this case, the basement and first floor of the building in a Residential (R) Zone will be occupied by personal service shops, retail store, wellness centre and office uses.

Section 6(1)(A), By-law 438-86 Personal service shops, retail stores, wellness centres and office uses are not permitted in district zoned R2 Residential. In this case, the basement and first floor of the building in a district zoned R2 Residential will be occupied by personal service shops, retail store, wellness centre and office uses.