

DECISION AND ORDER

Decision Issue Date Monday, August 09, 2021

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): 1710 MIDLAND HOLDINGS INC

Applicant(s): AARON PLATT, WESTON CONSULTING

Property Address/Description: 1710 MIDLAND AVENUE

Committee of Adjustment File

Number(s): 20 198850 ESC 21 MV (A0230/20SC)

TLAB Case File Number(s): 21 134277 S45 21 TLAB

Hearing date: July 22, 2021

Deadline Date for Closing Submissions/Undertakings:

DECISION DELIVERED BY JUSTIN LEUNG

REGISTERED PARTIES AND PARTICIPANTS

| Name | Role | Representative |
|----------------------------|-----------------|----------------|
| Weston Consulting | Applicant | |
| 1710 Midland Holdings Inc. | Owner/Appellant | Aaron Platt |
| Jane McFarlane | Expert Witness | |

INTRODUCTION

This is an Appeal from a decision of the Scarborough Committee of Adjustment (COA) relating to Variances for 1710 Midland Avenue (subject property).

The Variances had been applied for to the COA to permit the conversion of the existing industrial building to a 17-unit condominium industrial building.

This property is located in the Scarborough Centre neighbourhood of the old City of Scarborough which is situated south of Ellesmere Road and bounded by Midwest Road to the west and Brimley Road to the east. The property is located on Midland Avenue, south of Ellesmere Road and north of Lawrence Avenue East.

At the beginning of the hearing, I informed all Parties in attendance that I had performed a site visit of this subject property and the neighbourhood and had reviewed all materials related to this Appeal.

BACKGROUND

The Application consists of the following requested Variances:

- 1. Chapter 60.20.20.20.(23), By-law 569-2013**
In the E zone, a vehicle repair shop must be on a lot that is at least 100 m from a lot in the Residential Zone. The proposed vehicle service/repair shop is on a lot that is located 26 m from lots in the Residential Zone to the east.
- 2. Chapter 200.5.10.1.(1), By-law 569-2013**
A minimum of 125 parking spaces are required for the proposed vehicle service/repair and industrial sales/service use. A total of 103 parking spaces are proposed.
- 3. Chapter 200.5.1.10.(5), By-law 569-2013**
A required parking space may not be a tandem parking space. A total of 8 tandem spaces are proposed (spaces 22-29).
- 4. Chapter 60.20.80.20.(1), By-law 569-2013**
A parking space that is not in a building or structure must be at least 0.5 m from a lot line. The proposed 29 new parking spaces along the south lot line are 0 m from lot line. Note: 33 existing parking spaces along the south lot line are exempt from this requirement.
- 5. Chapter 60.5.80.10.(1)(A), By-law 569-2013**
A required parking space in a street yard must be at least 3 m from the front lot line and side lot lines. The proposed new parking spaces along Midland Avenue are located 2 m from the front lot line.
- 6. Chapter 60.5.80.10.(2)(A), By-law 569-2013**
A maximum of 5 parking spaces are permitted in the front yard. A total of 19 parking spaces will be located in the front yard.
- 7. Chapter 150.94.30.1.(1), By-law 569-2013**
Vehicle access to a lot (ie: driveway) with a vehicle service shop must have a minimum width of 6 m. The proposed width of the north vehicle entrance accessed from Midwest Ave and Midland Ave is 3.6 m.
- 8. Chapter 60.5.100.1(1)(A), By-law 569-2013**
In an Employment Industrial zone, a driveway must have a minimum width of 6 m. The proposed width of the north driveway accessed from Midwest Ave and Midland Ave is 3.6 m.

9. Chapter 150.94.30.(2)(B), By-law 569-2013

Vehicle access to a lot (ie: driveway) must be at least 3 m from any side lot line. The proposed north vehicle entrance accessed from Midwest Ave and Midland Ave is 0 m from the north side lot line.

10. Chapter 150.94.50.1.(1)(A), By-law 569-2013

A lot with a vehicle service shop must have a minimum 1.5 m wide strip of soft landscaping along the entire length of a lot line that abuts a street, excluding the part used for vehicle access to the lot. The proposed soft landscaping strip along the west lot line will have a minimum width of 0.6 m at the north end and 0.7 m at the south end.

11. Chapter 60.20.50.10.(1), By-law 569-2013

In an Employment Industrial zone, any lot line abutting a street must have a minimum 3 m wide soft landscaping strip. The proposed soft landscaping strip along the west lot line will have a minimum width of 0.6 m at the north end and 0.7 m at the south end, and the proposed soft landscaping strip along the east lot line will have a minimum width of 2 m.

These Variances were heard and partially approved at the March 11, 2021 Scarborough meeting. Variance NO. 1 was refused while the remainder of the Variances requests (NOs. 2-11) were approved by the Committee.

Subsequently, an Appeal was filed on March 30, 2021 by 1710 Midland Holdings Inc. The TLAB received this Appeal and scheduled a Hearing on July 22, 2021 for all relevant Parties to attend.

MATTERS IN ISSUE

The Applicant, who is also the Appellant, has submitted an Appeal requesting the TLAB to consider the proposal anew and to approval all the Variance requests. It is noted that there are no other Parties to this Appeal matter. The TLAB is still required, as per the general convention of adjudicative tribunals, to hold a *hearing de novo* to assess this proposal to determine if it meets requirements as stipulated in related Planning policies and legislation. While so, The TLAB here must solely rely on the evidentiary materials which have been brought before it to reach a ruling on this matter.

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 of the Greater Golden Horseshoe for the subject area ('Growth Plan').

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 *Planning 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 Hearing commenced with the Appellant's legal representative, Meaghan McDermid of Davies Howes, describing that this Appeal relates to an industrial complex. Her client intends to convert the complex to a condominium type ownership, and also want auto repair services to be a permitted use for this subject property. Eleven Variances are being presented for parking standards, driveway access & soft landscaping and for the auto repair type uses. The COA approved all Variances, excluding the Variance pertaining to the location of the auto repair use on the subject site. City Planning staff did not object to the Variance requests but did recommend three conditions be attached to any related approval.

Ms. McDermid then requested Exhibits be entered into the TLAB record, which I acknowledged and approved, as follows:

Exhibit 1: Document Disclosure

Exhibit 2: Expert Witness Statement of Jane McFarlane

Ms. McDermid then requested that the Expert Witness, Jane McFarlane of Weston Consulting, be called to the stand to provide testimony on this Appeal matter. I stated that, having reviewed Ms. McFarlane's curriculum vitae, I would be able to qualify her in the field of land use planning.

Ms. McFarlane commenced by indicating that she had conducted a site visit of this property. It consists of a one storey industrial building which contains 17 units. Two of these units have been combined to form a single unit so the site is currently operating with 15 units. The property has two property frontages onto Midland Avenue to the east, and Midwest Road to the west. The property has surface parking on all 'sides' of the industrial building and is a 'thru property' which allows direct vehicular access from Midland Avenue over to Midwest Road. There are four access points onto this property, with two on Midland Avenue and the other two on Midwest Road.

With regards to the parking situation on the northern portion of this property, the parking here is shared with the property adjacent to the north. There is also a shared driveway, or access easement, that exists between subject property and the property to the north.

Ms. McFarlane then presented a photo study of the subject property and of the surrounding neighbourhood. She then proceeded to show an aerial photograph of the subject site. She explained that this property is situated within the Dorset Park Employment District. This District is typified by low rise employment-type buildings. There is a variety of lot and building sizes in this District. A variety of uses are contained here including automotive uses, construction equipment repair, warehouse, light manufacturing, fabrication and distribution centres. To the east of this District is a residential area comprised primarily with low rise dwellings. These dwellings' rear yards face towards Midland Avenue.

Ms. McFarlane, in discussing the local neighbourhood context, referenced 1680 Midland Avenue, another property which she had done planning work on to re-organize the industrial building to be a condominium ownership arrangement, similar to the subject proposal.

As part of this proposal, the current parking configuration on the site will be altered. They will be conversion of some parking spaces to meet legal parking dimension standards and also to ensure Fire Dept. vehicles can access the property. Additional parking spaces will also be placed on the southern portion of the property. As part of the changes proposed for this property and its existing industrial building, two end units on the western portion of this building will be combined to become a single unit, with the two end units on the east portion will be for industrial uses, and the balance of the units being used for automotive type uses. Garbage and loading areas will be located on the southern portion of the property.

A total of 111 parking spaces will be proposed for this site, including some tandem parking spaces. A small road widening will be allocated for along Midland Avenue. Landscape and tree planting treatment will also be done for this site, to meet related Site Plan Application requirements. To implement the site plan, a series of eleven Variances is required. These Variance requests relate to permitting an auto repair shop, parking standards, driveway access and for landscaped strips. Ms. McFarlane indicated that she had also represented this client at the COA meeting where ten of the Variances were approved, with one Variance refused.

With regards to the staff report, she stated that they had worked closely with Planning staff to address issues relating to this proposal. As part of their discussions with staff, she had agreed to three conditions which were proposed including to restrict the automotive uses to Units 9-17 of the industrial building and for additional landscape works to be completed at this site.

Ms. McFarlane then commenced her analysis of the proposal as it relates to Planning policies and legislation. With regards to the *Provincial Policy Statement (PPS)*, more specifically the employment related policies here, she contends that this proposal would be consistent with the principles as they pertain to the PPS. She then provided testimony on the *Growth Plan for the Greater Golden Horseshoe*. She opines that this proposal is compatible to be located within a built-up area and would also meet employment objectives of the municipality and the province, thus conforming with the tenets of the *Growth Plan*.

Ms. McFarlane then proceeded to assess the proposal in relation to the four tests for Variance, as per the *Planning Act*. She commenced her analysis by looking at the test that relates to the *Official Plan (OP)*. The City's OP delineates this property as being subject to 'Employment Areas' policies. These policies contemplate for more intense use of such lands. Ms. McFarlane contends that this proposal would act to further increase the employment type uses for this subject proposal and would thus, in her summation, be consistent with the OP. The east portion of the property is designated 'General Employment Area' and the west portion 'Core Employment Area'. The location of the auto uses in the west portion of the property was to ensure it meets the 'Core Employment Area' policies. With regards to 'Policies for All Employment Areas', the proposal acts to meet these policy requirements in several facets including providing a competitive employment area, having sufficient parking and loading spaces, automotive uses will be contained entirely within the industrial building and additional landscape treatment on both yards fronting onto streets. As such, she opines that the proposal is consistent with the policies as espoused by the OP.

With regards to the *Zoning By-law*, in the Employment (E) zone designation, for auto repair shop the use is permitted, subject to meeting certain conditions. An auto repair shop must maintain a 100m distance from a residential zone. Due to this, they have located the auto repair shop uses on the west portion of the property, which would place it further away from the residential area which is located to the east of Midland Avenue. While they have done that, they would still not be able to meet the Zoning's distance separation requirements. As such, a Variance is needed to address this issue. Ms. McFarlane does reference the properties to the immediate north which are not 'through' lots have only one property frontage, either onto Midwest Road or Midland Avenue. With those properties, the 100m distance separation Zoning requirement does not exist. As such, some of these lots have auto repair uses which comply with the *Zoning By-law*. Here, Ms. McFarlane argues that their proposal for the auto repair uses to be located in the western portion of the industrial building on this property will be consistent with four other adjacent buildings which currently feature auto repair type businesses.

In terms of vehicle service shop, which relates to other auto type services, this use has two conditions attached to allowing such a use in an E zone. They both relate to road access width and distance separation from the access points to that property. A Variance is not needed for vehicle service shop as opposed to auto repair shop, due to differing provisions within the *Zoning By-law*. Ms. McDermid inquired as to how the auto repair shop use will be restricted to the western portion of this property. Ms. McFarlane responded that this will be achieved thorough a condition that was proposed by City Planning staff to restrict this use to Units 9 to 17 only.

The other Variance request pertains to altering parking standards for this property. In addition to requesting a reduction in required parking spaces, they also propose tandem parking spaces here as well. With regards to the Variance request to reduce the number of required parking spaces, Ms. McFarlane opines that a study undertaken by transportation consultants LEA Consulting has concluded that the parking ratio the *Zoning By-law* requires here is actually higher than what is actually needed for the uses proposed on this site. The consultant had used 1680 Midland

Avenue as a comparison site to this subject property with regards to parking space allocation. She notes that, as discussed previously in her testimony, 1680 Midland Avenue has similar orientation and uses to this subject proposal. This study was reviewed by City Transportation staff who deemed it to be appropriate and acceptable. With regards to the proposed tandem parking spaces, Ms. McFarlane argues that there will be some users of this property who will be parking their vehicle there for the day so will most likely not need to move their vehicle frequently. Furthermore, she indicates that there are other nearby properties which also utilize tandem parking configuration.

There is a Variance to allow for a reduction in the distance separation between a parking space and a lot line. This Variance relates to the proposed parking spaces on the southern portion of this property. For the parking spaces located perpendicular to Midland Avenue, they do not meet distance separation requirements in the *Zoning By-law* and hence another Variance is sought to permit this parking configuration. With these two Variances, Ms. McFarlane believes that the overall intent of the Zoning is being met.

Three Variance requests for the driveway width and access are also proposed. Due to existing site conditions, including a shared driveway arrangement, they cannot reconfigure the driveway and as such must seek Variances to recognize an existing site condition.

The remaining two Variance requests relate to landscape strip requirements. In terms of the reduced landscape strips along the lot or property lines, Ms. McFarlane contends that there will continue to be sufficient buffering between the property to the road. She does not believe it is a significant departure from the requirements of the *Zoning By-law*. With this, she argues that this proposal will be compatible and appropriate for this employment area. It will be similar in nature and orientation to the property of 1680 Midland Avenue. The proposal will also act to ensure the continued vitality of this employment area as well. This use is also described as being minor in nature as it is a use which complements other existing industrial uses in adjacent properties. Any potential adverse impacts of auto repair type uses have also been mitigated as part of this proposal. She indicated that the site currently does not have any parking issues so the changes to the parking configuration here should not act to exacerbate the parking situation. Ms. McFarlane's testimony then concluded here.

I stated that portions of the OP were under appeal to the Ontario Land Tribunal (OLT). With that, the employment related provisions were also subject to appeal. I inquired if this issue has any bearing on her testimony. Ms. McFarlane responded that she believes the proposal would meet both the in force and under appeal employment related provisions of the OP. I then asked if a traffic management plan was undertaken with this proposal. She indicated that City Transportation staff stated that they did not believe such a plan needed to be prepared. I inquired if the auto repair uses proposed for the site would be subject to Ministry of the Environment (MOE) requirements. She stated that they would not. I asked how converting this property to a condo arrangement would alter the maintenance of the site. Ms. McFarlane stated that besides allowing each unit tenant to now possess a common ownership of the site, there will continue to be a property manager for the site and the maintenance will continue unimpeded. She

also described that this condo arrangement is increasingly attractive to industrial type users.

No further submissions were made to the Tribunal and the Hearing then concluded.

ANALYSIS, FINDINGS, REASONS

It is noted that there was only one Party to this Appeal matter, which is the Appellant, who is also the original Variance Applicant. As such, the evidentiary material, as presented by their legal representative and Expert Witness (Planner), is uncontroverted. In review of the City's Application Information Centre (AIC), it is found that written comments had been submitted by property-owners and/or tenants when this Variance Application was being considered by the COA. However, at the TLAB stage, there are no other registered interested parties. In raising this, the Tribunal recognizes that this is a *hearing de novo* and that this proposal will be considered anew, irrespective of what transpired at the COA stage. As such, this Appeal matter is one which is of exclusive interest to a singular Party, the Appellant/Applicant, which means there are no additional issues which would need to be assessed by the TLAB here.

The Appellant's Expert Witness presented a comprehensive appraisal of this proposal and what her client intended to accomplish here. While the COA provided a partial approval of the Variance requests, the Appeal that has been filed is requesting the TLAB to assess the Variance requests in their entirety and argues that the Tribunal approve all Variances, as they contend that they all meet the four tests for Variance, as per the *Planning Act*.

The proposal is to convert the industrial building, and the parking spaces on the site, to a condo type ownership with the building now allowing for auto repair and vehicle service-related uses. While these are permitted uses for this Employment (E) zone designation, the subject proposal would not be able to meet other Zoning requirements, or also referred to as conditions, which relate to the allowance of these uses. The overall changes to the configuration on this site can be seen in the site plan as contained in the document disclosure material:

done, this would still not meet the distance separation requirements as provisioned for in the *Zoning By-law*. As such, a Variance request has been provided.

Ms. McFarlane contends that the placement of the auto repair uses on the westernmost units of the industrial building on site is similar to other industrial buildings in this employment area. She noted that the subject property is unique in that it is a 'through lot' or has two property frontages, onto Midwest Road and Midland Avenue, respectively. In comparison, there are several lots to the north of this property which are 'split' properties which only have a single property frontage. She further critiques it as follows:

"90. As noted in the description of the neighborhood, there are many properties to the north and south of the Subject Property which are not through lots. For example, the property to the north at 345 Midwest Road, only has frontage on Midwest Road and its property line is greater than 100 metres from the Residential Zone. Therefore, a vehicle repair shop use is permitted on this property, in the same area as is proposed on the Subject Property, because it meets the separation requirement from its property line. "¹

What is being expressed by the Expert Witness is that, in her opinion, the Variance for the distance separation of auto repair use to the nearest residential area is primarily a result of the property's 'through lot' configuration. However, on other 'split lots' within this employment area, there already exists auto repair businesses which comply with Zoning requirements. In addition, there is already an auto repair type business in operation at the subject property. As such, she contends what is being proposed here is consistent with the development pattern of this area and would not act to introduce a new condition for the neighbourhood. She further stated that City staff had engaged in fulsome discussion with the Appellant/Applicant and had expressed no objection to this use as proposed on this site, subject to staff recommended conditions.

Ms. McFarlane's testimony then proceeded to focus on the parking and driveway access Variance requests. She opined that the proposed redevelopment of the site has resulted in the need for Variances to address a reduction in parking. While so, they had commissioned a parking study by a transportation engineering firm which determined that the Variance requests here were appropriate for the re-developed industrial building. In addition, City Transportation staff had reviewed and accepted the findings as contained in this study. It was further stated in her testimony that this site would be of similar configuration to 1680 Midland Avenue. That property was used by Ms. McFarlane as a means to demonstrate that a similar site condition was already in existence in this employment area. As such, the allowance of this proposal would not act to disrupt the current neighbourhood state or rhythm.

In terms of the Variance requests relating to access to the site, which include driveway width and location of driveway, it was explained that the driveway configuration and their location on the property is due to site constraints. Furthermore, City staff had reviewed this and stated they did not object to the ingress/egress access as proposed for this site. Ms. McFarlane further explained that the driveways on the

¹ McFarlane, J. *Expert Witness Statement of Jane McFarlane*. June 2021, pp. 14

property are a current site condition and these Variance requests would act to legalize them.

The remaining two Variance requests pertain to the landscape areas along both property frontages. The Variances here are to reduce the required area for landscape strip that abuts a road. The testimony of Ms. McFarlane opined that even with these Variance requests, the landscape strip along both Midwest Road and Midland Avenue would be similar to other adjacent properties. In addition, the reduction in the landscape strip along Midland Avenue is to provision for a road widening, which has been stipulated by the City. As such, she argues that these Variances are appropriate and will allow for the redevelopment of this site. In permitting this proposal, it was articulated that this would ensure that this employment area will continue to be successful and viable.

The Tribunal accepts the uncontroverted testimony of the Expert Witness as proffered by the Appellant/Applicant in this Appeal matter. Ms. McFarlane's disclosure material and oral evidence provided to the TLAB has acted to demonstrate that this proposal has been sufficient assessed and vetted by City staff. With this, they have determined that the redevelopment proposal for this site is consistent with the prevailing tenets of this employment area. The auto repair and other uses that are being proposed for this site's reconfigured industrial building can be 'absorbed' into the Dorset Park Employment District, which it is situated in.

While it is noted that there are eleven Variance requests, what is prescient here is that planning is not a quantitative exercise. As has been expressed in other TLAB Appeal matters, planning is approached through a qualitative assessment methodology. As such, although there are eleven Variance requests before the TLAB, I would find that collectively these Variances do not demonstrate a significant departure from the existing site conditions. In addition, the Variance requests being posited here will also result in a redeveloped site similar in orientation to other complexes within this employment area. As such, the proposal is not attempting to introduce a new form of development. With regards to the residential area to the east of this property, it is noted that these residential dwellings have existed for a prolonged period of time adjacent to this employment area, which contains several industrial-type uses. As such, this proposal will not be acting to significantly increase adverse impact for said residents.

It is the further finding of this Tribunal that the proposal does act to meet the four tests for Variance, as per the *Planning Act*. With regards to the OP, the proposal is for employment type uses which are permitted for an employment area. As such, even with the approval of these Variances, the site will continue to comply with the underlying provisions as stipulated by the OP. With regards to the *Zoning By-law*, while there are eleven Variance requests before the TLAB, it was found, and based on the testimony of the Expert Witness, that the Variances represent a collectively small departure from the Zoning requirements. The lessened cumulative impact also demonstrates that this proposal is minor in nature. Finally, as this is an employment type proposal to be located within an employment area, this proposal will be compatible for this local area and will be assimilated into this community effortlessly.

In terms of the conditions which are recommended by City staff, the first condition is essentially a restriction which permits the auto repair use, so long as it is confined to Units 1 through 9 of this industrial building. The last two conditions pertain to overall site and landscape works, to be secured through the submission of appropriate site plan & landscape plan and through depositing financial securities for proposed landscape works. The Tribunal finds that these conditions would be appropriate to be applied to the approval of the eleven Variance requests herein and will ensure that the auto repair uses do not subsume the entire complex and will also be located further away from the residential area to the east of the property. In addition, they will also ensure necessary site work is done to provide necessary landscape buffering for this property in relation to adjacent properties. Moreover, it will also ensure the Appellant/Applicant here completes the proposed work on site as they had initially agreed upon, in principle, with City staff.

DECISION AND ORDER

The Appeal is allowed, and the Variances in Appendix 1 are approved subject to the conditions therein.

Appendix 1

List of proposed variances

- 1. Chapter 60.20.20.20.(23), By-law 569-2013**
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A lot with a vehicle service shop must have a minimum 1.5 m wide strip of soft landscaping along the entire length of a lot line that abuts a street, excluding the part used for vehicle access to the lot. The proposed soft landscaping strip along the west lot line will have a minimum width of 0.6 m at the north end and 0.7 m at the south end.

11. Chapter 60.20.50.10.(1), By-law 569-2013

In an Employment Industrial zone, any lot line abutting a street must have a minimum 3 m wide soft landscaping strip. The proposed soft landscaping strip along the west lot line will have a minimum width of 0.6 m at the north end and 0.7 m at the south end, and the proposed soft landscaping strip along the east lot line will have a minimum width of 2 m.

List of proposed conditions

1. Permission for vehicle repair shops under Variance No. 1. is limited to Units 9 through 17 only, located beyond 100 metres from a Residential zone on the east side of Midland Avenue;
2. The Owner shall submit site plan and landscape plans satisfactory to the Director, Community Planning, Scarborough District; and
3. The Owner shall submit financial security in the form of a Letter of Credit or certified cheque payable to the Treasurer, City of Toronto, in an amount equivalent to 75% of a detailed itemized landscaping cost estimate satisfactory to the Director, Community Planning, Scarborough District, to guarantee the provision of landscaping illustrated on the accepted landscape plans.

X

Justin Leung

Justin Leung
Panel Chair, Toronto Local Appeal Body