

Toronto Local Appeal Body

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DECISION AND ORDER

Decision Issue Date Tuesday, August 24, 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): BLUEBIRD INGRAM STORAGE CORP

Applicant(s): JOEL FARBER FOGLER, RUBINOFF LLP

Property Address/Description: 7-15 INGRAM DR

Committee of Adjustment File

Number(s): 19 155319 WET 05 MV (A0275/19EYK)

TLAB Case File Number(s): 19 185715 S45 05 TLAB

Hearing Date: Monday March 1, 2021

Deadline Date for Closing Submissions / Undertakings: Monday June 21, 2021

DECISION DELIVERED BY J. Tassiopoulos

REGISTERED PARTIES AND PARTICIPANTS

NAME	ROLE	REPRESENTATIVE
JOEL FARBER, RUBINOFF	APPLICANT	
BLUEBIRD INGRAM STORAGE CORP.	OWNER/APPELLANT	JOEL FARBER MAX REEDIJK
CITY OF TORONTO	PARTY MAF	LAURA BISSET / RC HARDIEJOWSKI
DAVID CAPPER	EXPERT WITNESS	

INTRODUCTION & BACKGROUND

This is an appeal to the Toronto Local Appeal Body (TLAB) from a City of Toronto (City) Committee of Adjustment (COA) decision Thursday June 20, 2019. The COA had previously approved the self-storage warehouse use at 7-15 Ingram Drive (subject property) on the condition that the proposal be constructed substantially in accordance with the site plan submitted and held on file by the COA office.

The subject property is located at the southeast corner of Keele Street and Ingram Drive, just east of Keele Street. Currently, the subject property includes a one storey self-storage building and a one storey office building, which will both be retained. The proposal is for the construction of a four storey self-storage warehouse building located at the rear of the office building. The subject property is zoned Employment Industrial (E) pursuant to City of Toronto By-law 569-2013 (new By-law) and was previously zoned Industrial Zone Two (M2) in the former City of North York By-law 7625 (former By-law).

The Appellant's counsel Messrs. Joel Farber and Max Reedijk, and the City's counsel Marc Hardiejowski advised the Chair that they had arrived at a settlement regarding the variance application to permit the construction of the four storey self-storage warehouse building (Application) on the subject property. The Minutes of Settlement (MOS) were submitted to the TLAB on February 22, 2021.

During the Hearing, two items were identified by the presiding Chair that had not been addressed during presentations by Mr. Reedijk or the land use planning evidence provided by the Mr. David Capper, who was qualified to provide expert evidence, namely:

- The property address identified in the Settlement was for <u>7-15</u> Ingram Drive, however, the property address in the TLAB file was for <u>7-11</u> Ingram Drive; and,
- The site plan submitted to the COA, dated January 9, 2019, and upon which the condition for COA approval was based (Exhibit #1, Tab7), differed from the site plan dated September 9, 2019 (Exhibit #1, Tab16). Given that the appeal and the MOS were premised on these new architectural plans and site plan, there was a concern that a recirculation of the Application by way of a new Notice had not been undertaken pursuant to S.45 (18.1.1) of the *Planning Act (Act)*.

As the presiding Chair I provided a written decision, dated May 18, 2021, noting that given the historical references of the original COA application, the public hearing notice, and the Notice of Appeal to TLAB, I was satisfied that the correct property address was indeed 7-15 Ingram Drive, and I directed TLAB to correct the address on the TLAB file and online Development Applications references found in the Application Information Centre.

I further indicated that pursuant to the requirements of S. 45 (18.1) of the *Act,* and before issuing a final decision on the Application, the Owner/Appellant was to recirculate amended plans and Notice to those who received notice of the original application. The Owner/Appellant was also directed to provide the TLAB with an affidavit that this recirculation was undertaken.

Pursuant to S. 45 (18.2) of the *Act,* those who received this Notice would have 30 days after the day that the Notice was given to notify the TLAB of their intention to appear before the TLAB. If no Notice of Intent was received by the TLAB within this time period, as prescribed in S. 45(18.2) of the *Act*, the TLAB would issue its final decision and order including any associated conditions, if required, following the expiry of this timeframe.

On May 19, 2021, an Affidavit was submitted to TLAB from the counsel for the Owner/Appellant that the Decision and Order along with the amended site plan and plans for the proposal at 7-15 Ingram Drive and the minutes of settlement had been circulated to 9 (nine) adjacent and surrounding property owners.

On June 21, 2021, an Affidavit was submitted to TLAB from the counsel for the Owner/Appellant, indicating that the service of Notice had been completed, the time period for the Notice of Intent had lapsed, and no notice had been made to TLAB. As prescribed in S. 45(18.3) of the *Act*, they asked that TLAB proceed to issue its final order approving the variances as amended.

MATTERS IN ISSUE

Has the circulation of Notice, as per the requirements and timelines outlined in section 45 (18.1 and 18.2) of the *Act*, and as per the TLAB Decision and Order of May18, 2021, been satisfied?

Was any Notice of Intent submitted to appear before TLAB regarding this amended application within the required 30 days after the day that the Notice was given?

Does the application, as presented at the Hearing, with its amended site plan and architectural plans, proposed variances and conditions, meet the four tests of S. 45(1) of the *Planning Act*?

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').

Minor Variance – S. 45(1)

In considering the applications for variances form 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.

Notice of Intent - S. 45 (18.2)

Any person or public body who receives notice under subsection (18.1) may, not later than thirty days after the day that written notice was given, notify the Tribunal of an intention to appear at the hearing or the resumption of the hearing, as the case may be. 1993, c. 26, s. 56; 1994, c. 23, s. 26 (8); 2017, c. 23, Sched. 5, s. 98 (6).

Order - S. 45 (18.3)

If, after the expiry of the time period in subsection (18.2), no notice of intent has been received, the Tribunal may issue its order. 1993, c. 26, s. 56; 2017, c. 23, Sched. 5, s. 98 (6).

Hearing (18.4)

If a notice of intent is received, the Tribunal may hold a hearing or resume the hearing on the amended application or it may issue its order without holding a hearing or resuming the hearing. 1996, c. 4, s. 25 (2); 2017, c. 23, Sched. 5, s. 98 (6).

EVIDENCE

At the March 1, 2021 Hearing, counsel for the Owner/Appellant, Mr. Max Reedijk, provided a brief introduction to the Application noting that four variances were being sought and that a settlement had been reached with the City on February 22, 2021. The variances sought, resulting from the settlement included:

- to permit a self-storage use on the subject property on the condition that the development is constructed substantially in accordance with the Site Plan Application (SPA) approved plans;
- permitting 62 motor vehicle parking spaces and 3 accessible parking spaces whereas 122 parking spaces are required under the former City of North York By-law 7625 and 104 parking spaces and 3 accessible parking spaces are required by the City of Toronto By-law 569-2013;

- permitting two Type A, one Type B, and one Type C loading spaces whereas three Type A and one Type B loading spaces are required by the former City of North York By-law 7625 City of Toronto By-law 569-2013; and,
- permitting a soft landscaping strip of 2.6m along the front property line whereas 3.0m is required by the City of Toronto By-law 569-2013.

Mr. Reedijk called upon Mr. David Capper as an expert witness and he was affirmed. Mr. Capper outlined his experience in his curriculum vitae (Exhibit #1, Tab 1) noting his education and more than 16 years of experience as an Urban Planner and that he had been previously qualified at TLAB, the OMB and LPAT. Having considered his experience, I qualified him to provide expert evidence in land use planning.

Mr. Capper provided a summary of the proposal and the variances noting that the intention was to legalize the current legal non-conforming with respect to the new Bylaw. He noted that there would be more than four variances because the variances for parking and for loading would also require variances from the former North York Zoning By-law 7625.

Mr. Capper provided an overview of the site through the provision of a photobook (Exhibit #2) that provided images and aerial plans of the subject property and its existing buildings and Perspectives from the surrounding context. Describing Ingram Drive as a general industrial and employment area with related uses, he noted that the properties to the south and southwest either included or had been recently approved for higher density residential uses ranging in height from three to eight storeys.

Mr. Capper also provided an overview of the history of the subject property and noted that the site plan and the previous variances sought to legalize the use based on the existing self-storage use was limited to the proposal being constructed substantially in accordance with the site plan submitted and held on file by the COA office. This condition was being appealed because that previous site plan did not include the footprint of the four storey building proposed in this application.

Mr. Capper then described the proposed site plan and the variances related to the plan including the reduced soft landscaping strip width, the loading area locations, and the indication of the reduced parking areas. He noted that the MOS indicates the variances and conditions that resulted from the SPA process and are required to move the application forward.

Mr. Capper went through the *Planning Act*, the Provincial Policy Statement 2020 (PPS) and the Growth Plan for the Greater Golden Horseshoe (GP) indicating that the proposal would not conflict with matters of Provincial interest as indicated in S. 2 of the *Act*. In his review of the PPS (Sections 1.1.1, 1.1.3, and 1.3) and the GP (Sections

1.2.1, 2.1, 2.2.1 and 2.2.5) he provided evidence indicating that the proposal was consistent and in conformity with their applicable policies.

With respect to the Official Plan (OP), Mr. Capper opined that not only does it encourage employment uses and their retention, but it also encourages more intensive use of employment lands and that they continue to function as employment areas (Section 2.2.4). He noted that in Section 4.6, Core Employment Areas, both storage and warehousing were indicated as permitted uses within the OP. He concluded that the variances required to implement the proposal conform to the OP policies.

Turning to new Zoning By-law 569-2013, he noted that although the self storage warehouse use is not permitted in the E (Employment Industrial) zone, it is permitted in the EO (Employment Office) and the EL (Employment Light Industrial) zones as well as former North York Zoning By-law 7625. In his opinion, there was no intent in the City's new Zoning By-law 569-2013 to remove the permission for self storage warehouse from the subject property and create a legal non-conforming use. Instead he opined that the new By-law intends to direct land uses in a compatible manner within the existing planning context and given the extended period that the self storage warehouse has functioned in this area, it was a compatible land use in its existing planned context.

With respect to the reduced number of required parking spaces, Mr. Capper indicated that a parking utilization plan was prepared by CF Crozier and Associate analyzing potential parking demand for self storage uses and the expanded use on the subject property. The analysis forecasted a surplus of parking spaces. Given the findings of the Transportation, Parking and Loading Operations Study dated December 2019 and the Transportation Response Letter dated August 6, 2020, prepared by C.F. Crozier & Associates Inc., it was his opinion that the proposed reduction in the amount of required parking spaces met the general intent of the Zoning By-law and the OP and the variances were minor and desirable.

The variances for the reduction in the number of loading spaces and types were indicated as appropriate and meeting the general intent and purpose of the Zoning Bylaw and OP. Mr. Capper noted that the Zoning By-law does not differentiate between the loading requirements for more intensive industrial uses and those of self storage warehouse facilities, resulting in a higher standard of loading types that would actually be required for this use. Referring again to the Transportation, Parking and Loading Operations Study and the Transportation Response Letter (Exhibit #1, Tabs 13 and 14), he noted that most loading activities were undertaken from vehicles using parking spaces on subject property, while loading from larger vehicles requiring dedicated loading space occurred, were less frequently used. He concluded that the variances were minor and appropriate as they provided for a sufficient number of loading spaces for this use.

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He noted a correction in his witness statement that the last sentence should have read "the proposed number of loading spaces has been deemed as sufficient for the use of the Subject Property <u>without</u> causing an undue impact on the adjacent parcels." (emphasis added)

Regarding the variance for the reduction of the landscape strip to 2.6m whereas 3.0m is required by the Zoning By-law, Mr. Capper explained that *"Such soft landscape strips are intended to provide areas for landscaping to reduce instances where parking areas are located immediately adjacent to the public realm and potentially impacting pedestrian activity on adjacent sidewalks."* He also indicated that the municipal boulevard width between the sidewalk and the property line would be 3.44m providing an additional green buffer between the parking and the sidewalk for a total of over 6.0m in separation.

In addition, he noted that the reduction in the landscaped strip would permit the provision of an accessible parking space at the front of the existing office building and assist accessibility to the building. He concluded for these reasons the variance was also minor in nature and desirable for the development of the lands.

Mr. Capper concluded his testimony by stating that the variances both collectively and individually meet the four tests for minor variance as established in the *Planning Act* and that the proposed variances were minor in nature, desirable for the appropriate development of the land, and met the general intent of the Official Plan and the Zoning By-law. He recommended that they should be approved.

In addition to Mr. Capper's evidence, as noted in the introduction of this Decision, sworn Affidavits were submitted to TLAB on May 19, 2021 and June 21, 2021 by counsel for the Owner/Appellant. Those documents confirmed that Notice of the plans for the proposal had been circulated to 9 (nine) adjacent and surrounding property owners, the time period for the Notice of Intent had lapsed, and no notice had been made to TLAB. Therefore, counsel requested that TLAB proceed pursuant to S. 45(18.3) of the *Act*, to issue its final order approving the variances as amended. This Decision and Order is in response to that request.

ANALYSIS, FINDINGS, REASONS

Given that the Parties in this matter had reached a settlement, Mr. Capper's evidence was uncontroverted. Even so, he provided a thorough review and analysis of the variances and applicable land use planning policies, which were very helpful to the presiding Member. In addition, the Minutes of Settlement, as agreed to by the Parties and reflecting the SPA process for the subject property and proposal, support the granting of the variances sought. I have considered the evidence presented by Mr. Capper and I find his conclusions with respect to the variances to be supportable. The

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evidence regarding the historical use of the site for self storage warehousing, as well as it being permitted in the former North York By-law 7625, indicate that the variance sought is to continue to permit this use on the subject property The results of the Transportation, Parking and Loading Operations Study, referred to during the Hearing, indicate that the variances for parking and loading spaces sought are appropriate for the use and function of a self storage warehouse on the subject property. The variance regarding the reduction in soft landscaping along the property frontage is minor and is desirable for the development of the lands as it also provides for an accessible parking space at the front of the subject property while still maintaining a green buffer between the parking and the sidewalk for of almost of over 6.0m. I have no reason to question to any of the evidence presented during the Hearing.

Furthermore, following the direction of the TLAB, the revised site plan and submission materials were circulated by the Owner/Appellants counsel as required by S. 45 (18.1) of the *Act*, and a Notice of Intent to appear from any of those property owners was not received by TLAB within the 30 day period that the Notice was circulate as per S. 45 (18.2) of the *Act*. As per the requirement of S. 45 (18.2) of the *Act* and having not received a notice of intent to appear before TLAB from those circulated, I am obliged to provide a Decision and Order concerning this application.

For the reasons stated above, I find that the variances sought, both individually and cumulatively, meet the relevant planning policy and all four tests under s. 45(1) of the *Planning Act*, maintain the general intent and purpose of the OP and Zoning By-law, and are appropriate for the development of 7-15 Ingram Drive, and minor in nature.

DECISION AND ORDER

The appeal of the Committee of Adjustment decision is allowed and its decision, dated June 20, 2019, is set aside.

The variances and the conditions set out in **Attachment 1** to this decision, are approved subject to the following condition:

The proposed self storage warehouse building shall be constructed substantially in accordance with the revised site plan and building elevations in **Attachment 2**.

John Tassiopoulos Pane Chair, Toronto Local Appeal Body

ATTACHMENT 1

7-15 Ingram Drive, City of Toronto

VARIANCES LIST

Chapter 60.20.20.10.(1) By-law 569-2013
 A self storage warehouse is not listed as a permitted use in an E Zone.
 The proposal is to permit a self storage warehouse.

2. Chapter 60.20.50.10, By-law 569-2013

The minimum width for a soft landscaping strip along the property frontage is 3.0m.

The proposed soft landscaping strip along the property frontage is **2.6m**.

3. Chapter 60.5.80.1(1), By-law 569-2013

The minimum required motor vehicle parking spaces is for 104 parking spaces including 6 accessible parking spaces.

The proposed number of parking spaces is for **62** parking spaces and **3** accessible parking spaces.

4. Chapter 60.5.90.1(1), By-law 569-2013

The minimum required loading spaces is for 3 Type A and 1 Type B loading spaces.

The proposed loading spaces is for **2 Type A**, **1 Type B**, and **1 Type C** loading spaces.

5. Section 6.A.2(a), North York By-law 7625

The minimum required motor vehicle parking spaces is for 122 parking spaces.

The proposed number of parking spaces is for **62** parking spaces and **3** accessible parking spaces.

6. Section 6.A.16(a)(ii)(D), North York By-law 7625

The minimum required loading spaces, based on the total gross floor area of the buildings of over 7,500m², is for 3 loading spaces. The proposed loading spaces is for **2 Type A**, **1 Type B**, and **1 Type C** loading spaces.

ATTACHMENT 1 (continued)

7-15 Ingram Drive, City of Toronto

CONDITIONS:

- 1. That the proposed new four storey self storage warehouse building will be constructed substantially in accordance with the revised Site Plan, Drawing No. A100, dated September 9, 2019, and Elevations Drawing No. A300, dated May 15, 2020, and A301 and A302, dated March 7, 2018 found in **Attachment 2.** Any other variances that may appear on these plans but are not listed in the written decision are **not** authorized.
- 2. The Applicant shall satisfy the conditions set forth in the following City memorandums:
 - (i) ESC Memorandum, dated January 14, 2021; and
 - (ii) Urban Forestry Memorandum dated December 23, 2020.
- 3. The City will grant Notice of Approval Conditions (NOAC) subject to the applicant satisfying conditions in memorandums noted in condition 2 and Final Site Plan Approval is subject to the Applicant complying with their conditions and all other conditions contained within the NOAC.
- 4. The City shall issue Final Site Plan Approval once all of the NOAC conditions have been satisfied, provided that the applicant does not raise new issues during its submission of materials to satisfy the NOAC conditions (i.e. altering the site plan in such a way that was not previously contemplated by the City or the Applicant).







