

Memorandum to the City of Markham Committee of Adjustment

December 6, 2019

File: A/145/19
Address: 91 Anderson Ave, Unit 12 – Markham, ON
Applicant: Minna Guan
Agent: Jacqueline Hall-Fusco
Hearing Date: Wednesday December 11, 2019

The following comments are provided on behalf of the East Team:

The applicant is requesting relief from the following requirements of By-law 88-76 and By-law 28-97, “Select Industrial with Limited Commercial MIC” zone, as amended, as it relates to a proposed respite day care within a unit of a commercial complex:

a) By-law 88-76, Section 6.1:

To permit a Respite Day Care Facility where such use is not permitted; and

b) By-law 28-97, Table B:

To permit 37 parking spaces, whereas 43 are required.

BACKGROUND

Property Description

The 4,519.09 m² (1.12 Ac) subject property is a multi-unit commercial building located on the east side of Anderson Avenue, north of Bur Oak Avenue, west of and adjacent to the GO Transit Rail corridor, and south of Castlemore Avenue. The subject unit, identified as unit 12 has an approximate gross floor area of 213.33 m² (2,296.27 ft²). The property is located within an employment area currently surrounded by a mix of existing low-rise buildings used for commercial office & retail, and light industrial purposes.

The Mount Joy Creek is located in the rear or east end of the property which is protected by the Greenway Buffer and regulated by the TRCA.

Proposal

The applicant is proposing a Respite Day Care Facility at 91 Anderson Avenue, Unit 12. The proposed use is not defined in the applicable Zoning By-law and is currently not permitted. While the applicant is requesting a parking reduction, as noted above, planning staff note that approval of a previous parking reduction resulted in 38 parking spaces on the property. The actual parking reduction attributable to the proposed use cannot be confirmed. However, the parking situation is explained later in the report.

Official Plan and Zoning

Official Plan 2014 (partially approved on Nov 24/17, and further updated on April 9/18)
“Service Employment & Greenway”

The subject property is located within the Markham Road Mount Joy Corridor, for which the objective is to provide a mixed-use local corridor that integrates a range of shopping, employment, and residential development at transit-supportive densities. While the subject property is not within the Secondary Plan boundary shown in Figure 9.3.7.3 of the 2014 OP, Policy staff advise that it will be included in the secondary plan area for which a background study is currently being undertaken.

The property is designated “Service Employment” with a “Greenway” overlay on the east portion of the site. “Service Employment” designation provides for uses that serve and support business, employment, and/or community and resident needs. While a Respite Day Care Facility is not explicitly listed as a permitted use in the 2014, Official Plan, the function of the proposed use satisfies the primary intent of servicing policies as envisioned by the “Service Employment” designation. No changes to the site or building exterior are proposed and the natural features of the Greenway and Mount Joy Creek will not be impacted. Staff are of the opinion that the variance is generally consistent with the policies of the Official Plan.

Applicant’s Stated Reason for Not Complying with Zoning

The applicant did not provide a reason for not complying with Zoning.

Zoning By-Law 88-76

The subject property is zoned “Select Industrial with Limited Commercial MIC” under By-law 88-76, as amended, which permits the following limited commercial uses:

“banks chartered under the laws of Canada; and professional and business offices.”

While the MIC zone does not explicitly permit Respite Day Care Facility, staff note that the proposed use is generally consistent with the general intent of the zoning by-law, and does not adversely impact the commercial character of the employment area.

Zoning Preliminary Review (ZPR) Not Undertaken

The owner has confirmed that a Zoning Preliminary Review (ZPR) has not been conducted. It is the owner’s responsibility to ensure that the application has accurately identified all the variances to the Zoning By-law required for the proposed development. If the variance request in this application contains errors, or if the need for additional variances is identified during the Building Permit review process, further variance application(s) may be required to address the non-compliance.

COMMENTS

The Planning Act states that four tests must be met in order for a variance to be granted by the Committee of Adjustment:

- a) The variance must be minor in nature;
- b) The variance must be desirable, in the opinion of the Committee of Adjustment, for the appropriate development or use of land, building or structure;
- c) The general intent and purpose of the Zoning By-law must be maintained;
- d) The general intent and purpose of the Official Plan must be maintained.

Parking Reduction

There are no specific parking standards for a Respite Day Care Facility as it is not a defined term within Parking By-law 28-97. A rate of 1 space per 25 m² of floor area is applied for all uses not specifically defined within the by-law. Based on the total gross floor area for the unit of 213.33 m² (2,296.27 ft²), a total of 9 spaces would be required. A site plan submitted as part of a variance application in 2018 shows a total of 38 parking spaces for all units located at 91 Anderson Avenue.

Parking for the Respite Day Care Facility is primarily for staff who remain on site during the day. Participants are dropped off or picked up by caregivers. Given the nature of

parking utilization associated with the proposed use, planning staff are of the opinion that the existing 38 spaces are sufficient to serve the property even with the addition of a respite day centre use.

TRCA Comments

The subject property is partially located within Toronto Region and Conservation Authority's (TRCA) Regulated Area. TRCA provided comments on December 4, 2019, indicating that the east portion of the site is partially within a Regulatory floodplain and valley/channelized watercourse known as the Mount Joy Creek. The TRCA request deferral of the application in order to further assess the impact and appropriateness of the use pending submission of additional materials, including a topographic survey completed by a certified Ontario Land Surveyor, which should delineate the existing development, floodplain, top of bank, setbacks and buffers.

PUBLIC INPUT SUMMARY

No written submissions were received as of December 3, 2019. It is noted that additional information may be received after the writing of the report, and the Secretary-Treasurer will provide information on this at the meeting.

CONCLUSION

Planning Staff have reviewed the application with respect to Section 45(1) of The Planning Act, R.S.O. 1990, c. P.13, as amended, and are of the opinion that the variance request is appropriate in terms of the principle of adding Respite Day Care Facility as an additional permitted use. Based on the data available today, Unit 12, which is the subject unit is proximal to, but outside the Regional Storm Floodplain. However, the TRCA has requested additional information to ensure this is the case and it is recommended that this requirement be satisfied through a condition, included in Appendix "A".

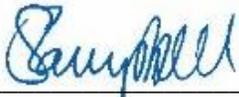
The onus is ultimately on the applicant to demonstrate why they should be granted relief from the requirements of the zoning by-law, and how they satisfy the tests of the Planning Act required for the granting of minor variances.

Please see Appendix "A" for conditions to be attached to any approval of this application.

APPENDICES

- Appendix "A" – Conditions List
- Appendix "B" – Aerial Photo of Subject Property
- Appendix "C" – Comments

REVIEWED BY:



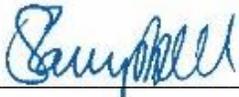
Sally Campbell, Development Manager, East District

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APPENDIX "A"

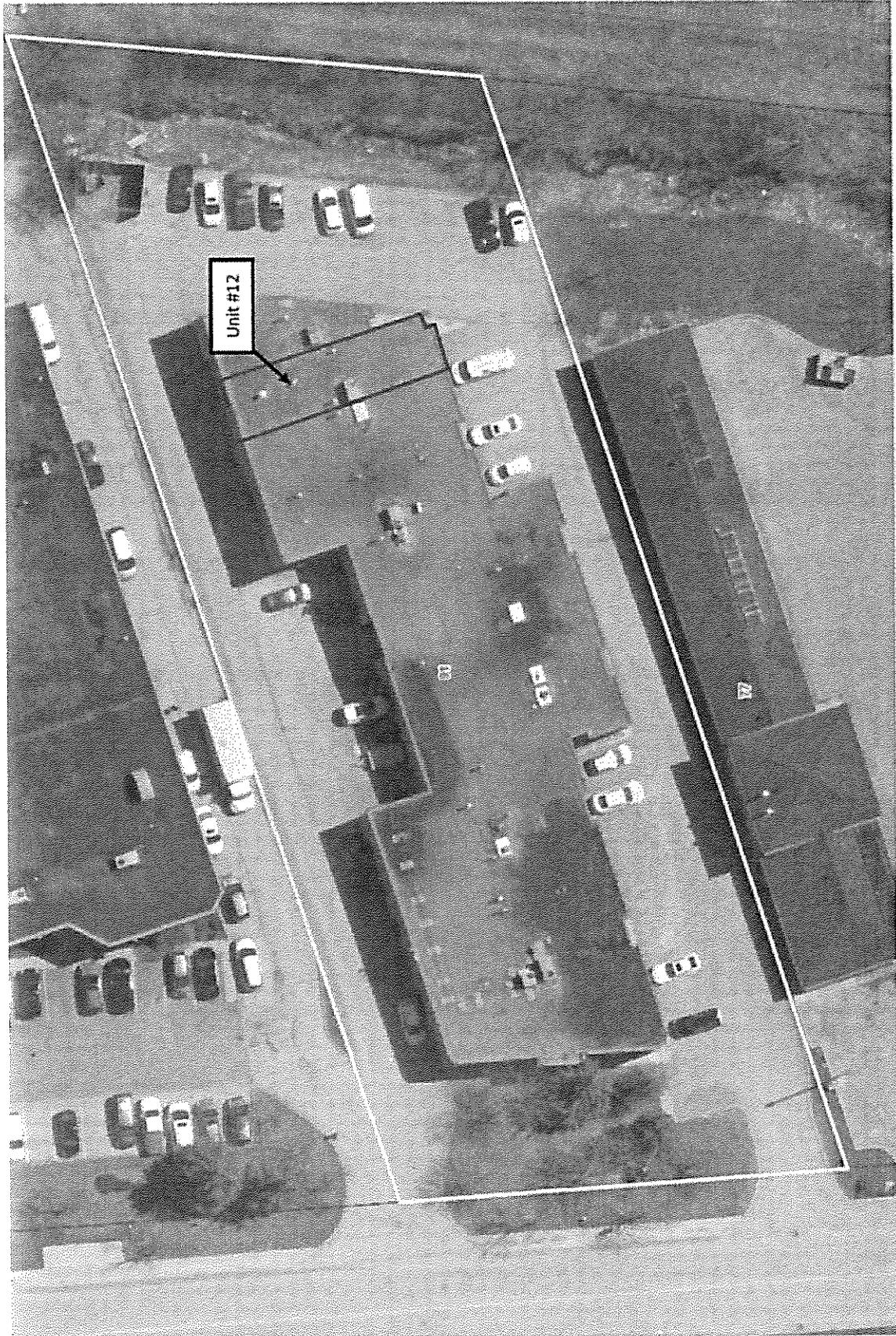
CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/145/19

1. The variances apply only to the proposed development as long as it remains.
2. That for the purposes of this variance, a Respite Day Care Facility means a non-profit and non-commercial facility offering the temporary care of adults, persons with disability, or other persons requiring supervised care on a temporary basis, which provided day programs, education, training or supervision to participants, such as an adult day program, but does not include overnight stays, child care centres, or other private schools.
3. That no individual Respite Day Care Facility exceed 1,000 m² in Gross Floor Area.
4. That the applicant satisfies the requirements of the *Toronto Region and Conservation Authority ("TRCA")*, financial or otherwise, as indicated in their letter to the Secretary-Treasurer attached as Appendix "C" to this Staff Report, to the satisfaction of the *TRCA*, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled to the satisfaction of *TRCA*.
5. That the applicant satisfies the financial requirements of the City of Markham's Director of Planning and Urban Design or designate for a minor variance application fee, to the satisfaction of the Director of Planning and Urban Design or designate, and that the Secretary-Treasurer receive written confirmation that this condition has been fulfilled to the satisfaction of the Director of Planning and Urban Design or designate.



CONDITIONS PREPARED BY:
Sally Campbell, Development Manager, East District

APPENDIX "B"
AERIAL PHOTO OF SUBJECT PROPERTY – 91 ANDERSON AVENUE, UNIT 12



APPENDIX "C"
COMMENTS TO BE ATTACHED TO ANY APPROVAL OF FILE A/145/19

December 6, 2019

CFN 60812.16

By Email Only (email: JLeung@markham.ca)

Mr. Justin Leung
Secretary-Treasurer
Committee of Adjustment
City of Markham
101 Town Centre Boulevard
Markham, ON L3R 9W3

Dear Mr. Leung:

Re: A/145/19 (Minor Variance Application)
91 Anderson Avenue, City of Markham
Owner: Minna Guan
Agent: Steer Friends (Jacqueline Hall-Fusco)

Thank you for the opportunity to review this Minor Variance application. This letter acknowledges receipt of the revised submission (on December 4, 2019) associated with the above noted application. Toronto and Region Conservation Authority (TRCA) staff have reviewed this circulation and our comments are provided herein.

Purpose of the Applications

It is our understanding that the applicant is requesting relief from the requirements of By-law 88-76, as amended, as it relates to a proposed respite day care.

Requested variances to the Zoning By Law:

- a) By-law 88-76, Section 6.1:
To permit a Respite Day Care Facility whereas a Respite Day Care Facility is not permitted; and,
- b) By-law 28-97, Table B:
To permit 37 parking spaces, whereas 43 are required.

Applicable TRCA Regulations and Policies

The TRCA provides our technical review comments through a number of roles. This includes TRCA's commenting role under the *Planning Act*; the Conservation Authority's delegated responsibility of representing the provincial interest of natural hazards encompassed by Section 3.1 of the Provincial Policy Statement (2014); TRCA's Regulatory Authority under Ontario Regulation 166/06, as amended (Development, Interference with Wetlands, and Alterations to Shorelines and Watercourses); and our Memorandum of Understanding with the Region of York where we advise our municipal partners on matters related to Provincial Policies relevant to TRCA's jurisdiction.

Ontario Regulation 166/06, as amended:

Based on the available information at this time, the subject property is within TRCA's Regulated Area as it is partially within a Regulatory Storm floodplain associated with the Rouge River Watershed and contains a channelized tributary of the Rouge River. In accordance with Ontario Regulation 166/06, a permit is required from the TRCA prior to any of the following works taking place in the Regulated Area:

- a) a straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream or watercourse, or for changing or interfering in any way with a wetland;
- b) development, if in the opinion of the Authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development.

Development is defined as:

- i. The construction, reconstruction, erection or placing of a building or structure of any kind;
- ii. Any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure;
- iii. Site grading, or;
- iv. The temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere.

Living City Policies for Planning and Development in the Watersheds of the TRCA:

The Living City Policies for Planning and Development in the Watersheds of the TRCA (LCP) is a TRCA policy document that guides the implementation of TRCA's legislated and delegated roles and responsibilities in the planning and development approvals process. The LCP describes a "Natural System" of water resources, natural features and areas, natural hazards, potential natural cover and/or buffers. TRCA policies generally require that natural features within the "Natural System" be protected from development, site alteration and infrastructure. Notwithstanding additional setbacks prescribed by federal, provincial or municipal requirements, TRCA defines the limit of the "Natural System" as the greater of, but not limited to the following:

- Valley and Stream Corridors: 10 metre buffer from the greater of the long-term stable top of slope (LTSTOS), stable top of slope, Regulatory Floodplain, meander belt, and any contiguous natural features or areas;
- Woodlands: 10 metre buffer from the dripline and any contiguous natural features or area;
- Wetlands: 30 metre buffer from Provincially Significant Wetlands and wetlands on the Oak Ridges Moraine, and a 10 metre buffer from all other wetlands and any contiguous natural features or areas.

Provincial Policy Statement (2014):

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. According to subsections 3 (5) and (6) of the Planning Act, as amended, all planning decisions made by a municipality and all comments provided by the TRCA shall be consistent with the PPS.

Through a MOU between Conservation Ontario, the Ministry of Municipal Affairs and Housing, and the Ministry of Natural Resources and Forestry, the responsibility to uphold the natural hazards section of the PPS (Section 3.1) has been delegated to Conservation Authorities where the province is not involved. In accordance with the PPS, development (including institutional

uses such as day cares) shall not be permitted within hazardous lands which are impacted by flooding/erosion hazards, and shall not be permitted within areas that would be rendered inaccessible to people and vehicles during times of flooding.

Application Specific Comments

As noted above, the eastern portion of the subject property is located within TRCA’s Regulated Area as it is partially within a Regulatory floodplain and channelized watercourse. Based on the available information at this time, the proposed daycare may be within hazardous lands and/or its buffer. Given that the PPS and TRCA’s Policies do not permit institutional uses (including day cares) within hazardous lands and TRCA’s policies require buffers to be provided from hazardous lands, the TRCA recommends that this application be deferred until such time that the extent of natural hazards and their buffers have been site verified.

The TRCA will require a topographic survey, signed and stamped by an Ontario Land Surveyor, delineating the existing development, floodplain, top of bank, watercourse, and setbacks/buffers (i.e. 10 m from Regulatory floodplain) to be submitted to our office for review. By copy of this letter, the applicant is advised to contact our office to obtain the Regulatory floodplain information to be plotted on the survey.

Application Review Fee

A review fee of \$1100 is required as per TRCA’s 2018 Fee Schedule for Planning Services (Variance – Institutional/Commercial/Industrial- Minor). This fee must be provided to our office within 60 days of this letter and prior to any further review of these applications. Please note that this fee covers up to two submissions.

Recommendation

In light of the above, TRCA staff recommends that the Minor Variance application be deferred at this time, and require the following items to review this proposal further:

- A topographic survey signed/stamped by an Ontario Land Surveyor delineating the existing development, floodplain, top of bank, watercourse, and setbacks/buffers (i.e. 10 m from Regulatory floodplain); and
- TRCA Minor Variance review fee of \$1,100.

I trust these comments are of assistance. Should you have any questions, please do not hesitate to contact me at the undersigned.

Sincerely,



Andrea Lam
Planner I
Development Planning and Permits
Extension 5306

AL/mb