

## Memorandum to the City of Markham Committee of Adjustment

October 23, 2019

**File:** A/94/19  
**Address:** 81-131 Telson Rd Markham  
**Applicant:** 1217862 Ontario Limited (Keith Lahay)  
**Agent:** McDermott & Associates Limited (John McDermott)  
**Hearing Date:** Wednesday October 23, 2019

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

The applicant is requesting relief from the following requirements of By-law 108-81, "Select Industrial Zone (M)" as amended:

- a) **By-law 108-81, Section 7.1.1, the Uses Permitted within the Select Industrial (M) Zone:** a two storey structure used for the purposes of business and professional offices, inclusive of private commercial schools, dance studios, art studios or other similar cultural activities, provided the maximum ground floor area of the building does not exceed 445 square metres and the maximum floor area ratio does not exceed 12 percent; whereas the By-law does not permit business and professional offices, and private commercial schools within the Select Industrial (M) Zone;
- b) **By-law 108-81, Section 7.1.1, the Uses Permitted within the Select Industrial (M) Zone:** below grade storage lockers having a maximum gross floor area of 470 square metres exclusive of stairways and utility rooms beneath Units 87,89,91,95 and 97 Telson Road and Unit 99 Telson Road; whereas the By-law does not permit storage lockers within the Select Industrial (M) Zone;
- c) **By-law 108-81, Section 7.1.1, the Uses Permitted within the Select Industrial (M) Zone:** ancillary offices and retail sales in association with a use permitted within the Select Industrial (M) Zone provided that, within any individual premises, the maximum combined gross floor area devoted to such ancillary uses and activities shall not exceed 15 percent of the gross floor area of the premises, and, that any areas used for such purposes shall be physically separated, by a floor to ceiling wall or similar partition, from the balance of the floor area devoted to the primary permitted use; whereas the By-law does not permit ancillary offices and retail sales within the Select Industrial (M) Zone;
- d) **By-law 108-81, Section 4.7.1 (b):** a minimum depth of the landscaped open space strip required adjacent to the southerly limits of Telson Road to 2.5 metres; whereas the By-law requires a landscaped open space strip having a minimum depth of 6 metres adjacent Telson Road;

- e) **By-law 108-81, Section 4.4.1, as Amended by Parking By-law 28-97, Sections 3 and 5.1:** the minimum number of parking spaces, measuring 2.6 metres by 5.8 metres, to one parking space for each 50 square metres of gross floor area provided that a minimum of two accessible spaces, measuring 4.1 by 5.8 metres, are provided in the front yard; whereas the By-law requires a minimum of 117 off-street parking spaces and that 5 percent of the parking spaces be dedicated and used as accessible parking spaces;
- f) **By-law 108-81, Section 4.5.2, entitled Size of Loading Space:** loading spaces located in the side yards and which are accessible at grade shall to a width of 6 metres measured parallel to the wall of the structure, a depth of 3 metres measured perpendicular to the wall of the structure, and, a minimum clearance of not less than 4.2 metres; whereas the By-law requires that a loading space shall have a width of 3.6 metres, a length of not less than 12 metres and a minimum clearance of not less than 4.2 metres; and
- g) **By-law 108-81, Section 4.5.2, entitled Size of Loading Space:** the minimum size of a loading space for a truck level loading docks located in the rear yard to have a width of not less than 3.6 metres measured parallel to the wall of the structure, a minimum depth of 4.9 metres measured perpendicular to the wall of the structure, and, a minimum clearance of 4.2 metres, exclusive of any area which may be utilized for the purposes of off-street parking; whereas the By-law requires that a loading space shall have a width of 3.6 metres, a length of not less than 12 metres and a minimum clearance of not less than 4.2 metres;

as it relates to an existing commercial-industrial complex.

## **BACKGROUND**

### **Property Description**

The 0.83 hectare subject property is located north of Steeles Avenue East and east of Victoria Park Avenue (see Appendix "A") and is municipally known as 81 and 129 Telson Road. A 4,326 m<sup>2</sup> multi-unit building, constructed in 1978 with a variety of industrial, commercial, and office uses, occupies the property.

### **Proposal**

The applicant is not proposing any interior alterations to the existing buildings or any exterior alterations to the site access, landscaping, or parking areas as part of this application. This application seeks relief from By-law 108-81 to legalize existing on site commercial uses and recognize existing parking, landscape and loading space conditions that do not comply with the by-law. The commercial uses include office, retail, commercial schools, and commercial storage lockers, as discussed further in the comments section of this report.

### **Official Plan and Zoning**

2014 Official Plan (partially approved on Nov 24/17, and further updated on April 9/18)

The subject property is designated "General Employment" in the 2014 Official Plan. The designation provides for manufacturing, processing, and warehousing uses that may be supplemented with accessory retail or service uses. Development standards in this designation are intended to protect these areas from incompatible sensitive land uses and other non-industrial uses.

The designation also provides for discretionary uses including but not limited to commercial schools and office uses other than medical offices subject to the review of a site-specific development application for zoning approval. The designation prohibits private school, sports and recreation, and commercial storage facility uses among other non-employment related uses.

### **Zoning By-Law 108-81**

The subject property is zoned "Select Industrial Zone (M)" under By-law 108-81, as amended, which allows for warehousing and manufacturing uses, data processing centres, research laboratories, printing establishments, other similar industrial uses, and private clubs and health centres. Private Schools and commercial uses, including commercial schools, commercial storage facilities, and retail uses are not permitted within the "Select Industrial Zone (M)" zone.

### **Parking Standards By-law 28-97**

The existing uses on the subject property do not comply with Parking By-law 28-97 with respect to the required parking standards. Further details on the parking requirements are provided in the comment section below.

### **Applicant's Stated Reason(s) for Not Complying with Zoning**

According to the information provided by the applicant on the application form, the reason for not complying with Zoning is stated below:

*"Given the design and construction of the office structure, erected circa 1976-1978, the central building on the property is not suitable or adaptable to provide for the introduction of the uses contemplated under Section 7, the Select Industrial (M) Zone, of By-law No. 108-81, as amended. Similarly, the approved built form is not consistent with the current parking standards and other similar regulatory provisions of the Zoning By-law.*

*If the requested relief, as set out in the attached planning rationale, is not granted and the provisions of the By-law are strictly enforced, the use of the office building will be significantly compromised and ultimately become vacant and underutilized. The effect of not approving the application will be to create an unreasonable degree of hardship given that the existing uses of the four buildings have continued since completion of construction in 1978."*

Additional justification is outlined in the planning rationale letter submitted by the applicant (see Appendix "C").



### **Zoning Preliminary Review (ZPR) Undertaken**

The applicant completed a Zoning Preliminary Review (ZPR) on May 22, 2019 to confirm the variances required for the proposed development. The requested variances have been revised by the applicant from those identified in the Zoning Preliminary Review response. Consequently, 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 proposal. 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 application is to request permission under Section 45(2)(a) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, to convert the use of land, buildings, or structures from a legal non-conforming use to a similar legal non-conforming use or to a use that is more compatible with the uses permitted under the relevant Zoning By-law.

The Town of Markham issued a building permit for the existing structures on the property on December 8, 1976. While the building permit has been disposed of as per the City's document retention by-law of the time, the City's archived building permit records indicate that the building permit was for the construction of "4 multiple occupancy industrial spec. buildings" and a "storage area in the basement". The record does not indicate that the buildings were constructed for commercial purposes.

Prior to the enactment of the existing applicable zoning by-law (By-law 108-81), the subject property was zoned "Select Industrial and Warehousing (M.I.)" under By-law 119-73 (see Appendix "B"), which permitted warehousing and manufacturing industrial uses and private clubs and did not permit commercial uses.

There is no record to indicate that there have been alterations to the existing structures on site since the issuance of the initial building permit in 1976. Notwithstanding, it is the responsibility of the applicant to demonstrate that the current uses on the subject property are legal and existed prior to the passing of By-law 108-81. Therefore, Staff recommend deferral of the application until such evidence has been provided.

### **To permit business and professional offices, inclusive of private commercial schools, dance studios, art studios other similar cultural activities, and commercial storage lockers**

At this time, Staff cannot support relief from the by-law to permit business and professional offices, private commercial schools, dance studios, art studios, other similar cultural activities, or commercial storage lockers. Given that the aforementioned uses do not exclusively support a primary industrial, manufacturing, or warehouse use, Staff are of the opinion that the commercial uses do not meet the intent of the "Select Industrial (M)" zone in By-law 108-81 or the intent of the "General Employment" designation in the 2014 Official Plan to protect areas within this designation from incompatible sensitive land uses and other non-industrial uses. Additionally, there is no evidence to support that the



uses and other non-industrial uses. Additionally, there is no evidence to support that the aforementioned or similar commercial uses operated before the enactment of By-law 108-81 to be permitted relief under Section 45(2)(a) of *The Planning Act*.

#### **Ancillary offices and retail sales in association with a use permitted within the Select Industrial (M) Zone**

Staff are generally supportive of ancillary offices and retail sales that supplement a primary industrial use permitted within the "Select Industrial (M)" zone. These uses are subject to development standards and gross floor area limitations outlined in Section 8.5.5.2 of the 2014 Official Plan. Notwithstanding, sufficient evidence must be provided by the applicant to support that the ancillary offices and retail sales uses sought existed prior to the passing of By-law 108-81.

#### **Reduced landscape open space, loading space requirements and parking requirements (existing conditions)**

Staff are open to exploring potential adjustments to the landscape open space, loading space requirements, and parking requirements. Notwithstanding, Staff are not in a position to comment on the requested relief from the by-law standards until the proposed permitted uses have been confirmed.

#### **PUBLIC INPUT SUMMARY**

No written submissions were received as of October 18, 2019. It is noted that additional information may be received after the writing of the report, and the Secretary-Treasurer will provide this information at the meeting.

#### **CONCLUSION**

Planning Staff have reviewed the application with respect to Section 45(2)(a) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, and are of the opinion that there is not sufficient evidence to indicate that the proposed commercial uses existed prior to enactment of By-law 108-81. Staff recommend deferral of the application until such evidence is provided by the applicant, or until the applicant apply for changes to the by-law standards or uses under Section 45 (1) of *The Planning Act*, R.S.O. 1990, c. P.13, as amended. Committee should consider public input in reaching a decision.

The onus is ultimately on the applicant to demonstrate why relief from the requirements of the zoning by-law should be granted.

#### **APPENDICES**

Appendix "A" – Zoning & Property Context Map

Appendix "B" – By-law 119-73 Excerpt

Appendix "C" – Submitted Planning Rationale Letter

**PREPARED BY:**



Luis Juarez, Planner, Central District

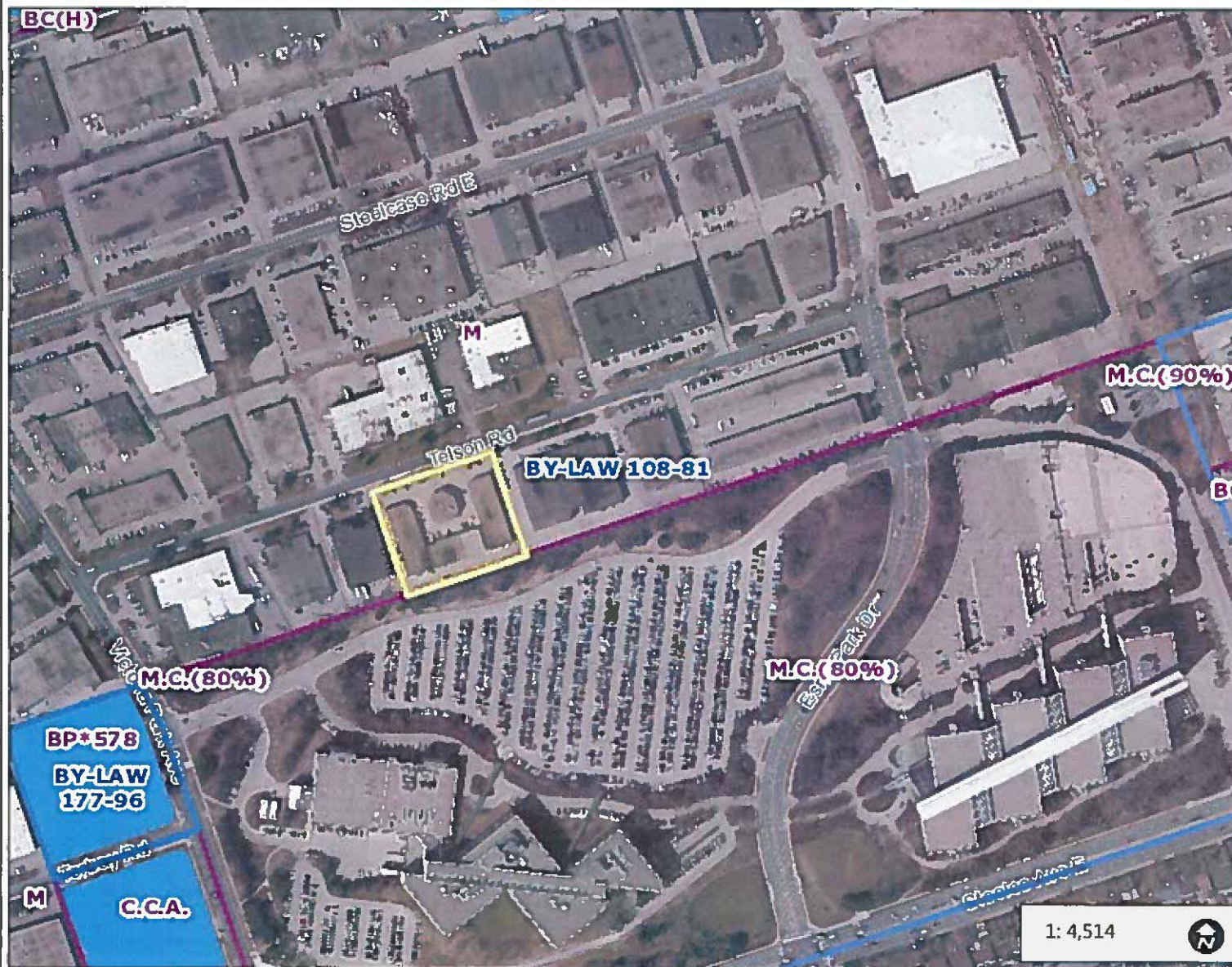
**REVIEWED BY:**



Stephen Lue, Development Manager, Central District

File Path: Amanda\File\ 19 134738 \Documents\District Team Comments Memo





1: 4,514



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NAD\_1983\_UTM\_Zone\_17N











© City of Markham

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

**THIS MAP IS NOT TO BE USED FOR NAVIGATION**



### Legend

-  Parent By-laws
-  Zoning Designations
-  Zoning Amendments
- LANDMARKS\_6000
- SLRN\_6000
- PARKS\_6000
-  Building Footprints
-  Ponds
-  Creeks
-  Rivers
-  Parcel (MPAC)
- Parks
-  <all other values>
-  Under Development

### Notes

AMENDED BY

LAW NO. 169-73

CORPORATION OF THE TOWN OF MARKHAM

BY-LAW NUMBER 119-73

7-73, 85-71, 136-74  
 76-74, 53-75, 77-75  
~~78-75~~, 94-76, 56-76  
 8-76, 104-76

This By-law repeals Township of Markham By-law 1957, as amended by Township of Markham By-laws 1964, 1975, 2235, 2236, 2349, 2421, 2501, and the Town of Markham By-laws 51-71, 52-71, 69-71, 110-71, 126-71 and 20-72.

## A ZONING BY-LAW

A By-law to regulate the use of land and the erection or use of buildings or structures and to regulate the type of construction and the height, bulk, location, size, floor area, spacing, external design, character and use of buildings or structures in a defined area of the Town of Markham.

READ a first and second time this 14<sup>TH</sup> day of AUGUST 1973

READ a third time and passed this 14<sup>TH</sup> day of AUGUST 1973

APPROVED by Ontario Municipal Board this day of 1973

.....

WHEREAS it is considered desirable to prohibit the use of land and the erection and use of buildings or structures except for certain purposes, and to regulate the type of construction and the height, bulk, location, size, floor area, spacing, external design, character, and use of buildings or structures in a defined area of the Town of Markham in accordance with the Planning Act, R. S. O. 1970, Chapter 349.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARKHAM ENACTS AS FOLLOWS:-

APPROVED BY ONTARIO MUNICIPAL BOARD  
 AS AMENDED, MARCH 11, 1975.

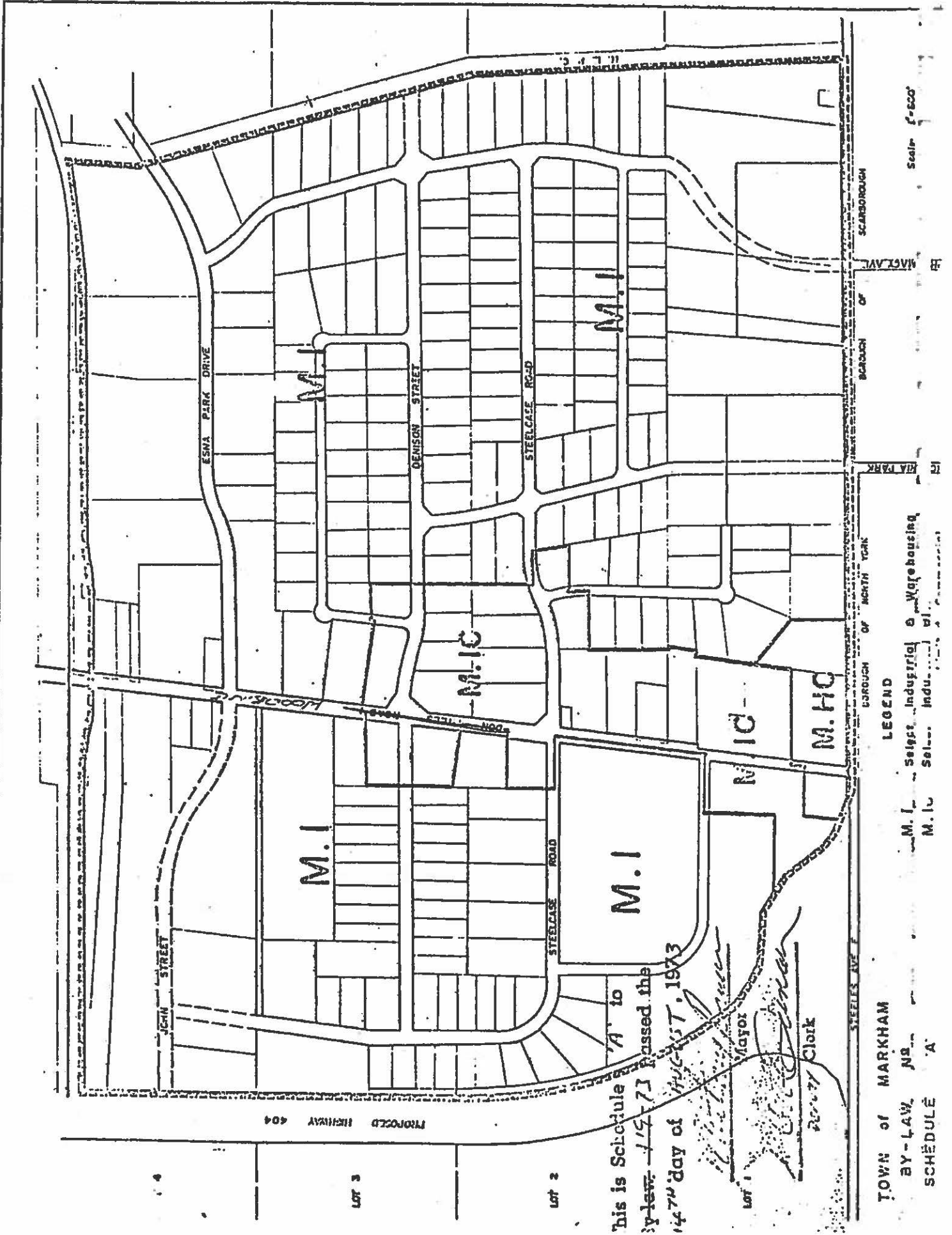


SECTION 1 - TITLE AND AREA RESTRICTED

- 1.1 This By-law shall be known as the "South Don Mills Industrial Area Zoning By-law" of the Town of Markham.
- 1.2 Schedule 'A' attached hereto, with the notations and references shown thereon, defines the area to which the provisions of this By-law shall apply. Schedule 'A' is hereby declared to be part of this By-law and is entitled as follows:

TOWN OF MARKHAM BY-LAW NO.

Schedule 'A'





## SECTION 7 - SELECT INDUSTRIAL & WAREHOUSING (M.I) ZONE

No person shall hereafter use any building, structure or land and no person shall hereafter erect, extend or alter any building or structure in any "Select Industrial & Warehousing (M.I) Zone" except in accordance with the following provisions:

### 7.1 USES PERMITTED

#### a) Residential:

No residential uses shall be permitted except for one dwelling unit for a caretaker, workman or other similar person employed on the premises concerned. Such a dwelling unit shall form part of a building subject to the requirement of minimum gross ground floor area per building under this By-law.

#### b) Public:

Public uses as described in Section 5.8.

#### c) Industrial:

(i) Warehousing of goods and materials within a wholly enclosed structure, but not including a transport terminal for the loading or unloading of goods and wares from transport vehicles.

(ii) Assembly of manufactured goods as follows:  
textiles, wood, paper, light metal sections, radio and television equipment and other similar products.

(iii) Manufacture within enclosed buildings of goods as follows:  
radio and television equipment, drugs, cosmetics, jewellery, watches, toys, publishing and book binding, office equipment, sanitation products, chemical products, aluminum products, electrical products and any other manufacturing or industrial establishments within an enclosed building such as canning and food plants, laundries and dry cleaning plants, bakeries, printers, dyers and similar establishments which are not obnoxious.

~~a) Private Clubs.~~

53.75

(d) Private Clubs and Health Centres.

**Land Use Planning Rationale  
In Support Of An Application For A Variance  
From the Provisions of By-law No. 108-81, As Amended,  
In Relation to 81-131 Telson Road in the City of Markham  
Pursuant to the Provisions of Section 45(2)(a)(ii) of the  
Planning Act, R.S.O.1990, c.P13, as amended**

prepared for:  
**1217862 Ontario Limited**

prepared by:  
**McDermott & Associates Limited  
Land Use & Environmental Planning Consultants**

**September, 2019**



**McDERMOTT & ASSOCIATES LIMITED**  
**LAND USE & ENVIRONMENTAL PLANNING CONSULTANTS**

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 PICKERING, ONTARIO L1V 6W9  
 TELEPHONE: (905) 509-5150  
 e-mail: mcdplan@bell.net

September 5, 2019

The Chair & Members  
 Committee of Adjustment  
 Corporation of the City of Markham  
 101 Town Centre Boulevard,  
 Markham, Ontario  
 L3R 9W3

Attention: Mr. Justin Leung  
 Secretary - Treasurer

**Re: Application For Section 45(2)(a)(ii) Variance**  
**81 - 131 Telson Road, Lots 35 and 36, Registered Plan 9001**  
**Part of Lot 2, Concession 4, former Town of Markham**  
**Our File: PN 5194**

Dear Mr. Leung:

We have been retained by 1217862 Ontario Limited to assist with the preparation and filing of the requisite documentation in support of an application pursuant to the provisions of Section 45(2)(a)(ii) of the Planning Act for a variance from the provisions of By-law No. 108-81 of the City of Markham. The purpose of the application is to request approval of a variance from the provisions of the Select Industrial (M) Zone to recognize the existing use of 81-131 Telson Road for the purposes of a multi-unit commercial - industrial complex, inclusive of business and professional offices and ancillary locker storage facilities, erected between 1976 and 1978.

A copy of the application is attached hereto as Appendix "A" to this submission. Prior to submission of this application, a request was filed through the City of Markham's e-Plan portal for a Preliminary Zoning Review on or about May 8, 2019. The need for the variances set out in this submission with respect to the existing use of the property and parking space requirements were confirmed by way of documentation received from the City of Markham Building Department on August 15, 2019.

To assist the Committee of Adjustment in its review and consideration of this application, we have provided a brief overview of the location and site characteristics of the lands in question, the contextual setting of the property, and, the Municipal land use planning instruments and regulatory provisions intended to guide the use of the subject lands. The submission concludes with a summary of the relief being sought from the provisions of By-law No. 108-81, as amended, and a rationale in support of the application. In this regard we offer the following comments for your review and consideration.

1. Location and Site Characteristics

The lands in question, municipal address 81-131 Telson Road are located on the south side of Telson Road, approximately 286 metres to the east of Victoria Park Avenue and 362 metres to the west of Esna Park Drive in the City of Markham. The property, which is legally described as forming Lots 35 and 36 of Registered Plan No. 9001, has an area of approximately 8,385 square metres (i.e. 2.07 acres) and a frontage of approximately 97.5 metres (i.e. 320 feet) on Telson Road.

We understand from discussions with Staff of the City of Markham that a building permit was issued to allow for construction of four structures on the property circa 1976. As originally constructed, the structures consist of a two storey office building, having a gross floor area of approximately 886 square metres internally demised to create nine office suites, and, three single storey, multi-unit, quasi commercial-industrial structures, consisting of 24 units with a gross floor area of approximately 2,975 square metres. In addition, storage lockers, which are accessible from two separate entrances located at the rear of the multi-unit structures, are located below grade. The gross floor area associated with the below grade storage lockers is approximately 465 square metres.

The property is fully serviced by means of the municipal water supply and distribution system, sanitary sewers, and, storm and surface drainage works. Access to the site is provided by means of four ingress and egress driveways which facilitate vehicular access to and from Telson Road and the off-street parking and loading / unloading areas. The off-street parking areas are located in the front and rear yards. Each of the quasi commercial - industrial units contains a sectional garage door which provides access to the side and/or rear yards to facilitate the loading and/or unloading of goods and materials. Truck level loading and unloading docks are located in the rear yard.

A copy of the real property survey, dated December 9, 1997, as prepared by Rabideau & Czerwinski, Ontario Land Surveyors at the time of purchase of the property by 1217862 Ontario Limited in early 1998, is attached hereto as Appendix "B". Based upon this information and readily available documentation provided by our Client, a drawing has been prepared illustrating the general location and approximate dimensions of the off-street parking areas, the configuration of the multi-unit buildings, the location and nature of the loading and unloading facilities, and, the landscape open space areas and related amenity features. In addition, details are provided to illustrate the floor plans of the two storey office building and the configuration of the basement storage lockers. A copy of the drawing illustrating existing as-built conditions is attached as Appendix "C" to this submission.

To assist in the evaluation of the application for relief pursuant to Section 45(2)(a)(ii) of the Planning Act, the purpose of which is to recognize the existing use of the property and buildings situated at 81- 131 Telson Road which has continued since 1978, various photographs of the site and buildings are provided in Appendix "D" to this submission.

## 2. Contextual Setting

The subject lands are located within an area developed for a range of office and quasi commercial - industrial / manufacturing forms of land use. An aerial photograph, flown in March of 2018, delineating the subject lands, municipal address 81- 131 Telson Road, and the boundary of the study area is attached hereto Appendix "E".

The study area is generally defined as the area bounded by the northerly, rear property line of those lots fronting upon Steelcase Road East on the north, the rear property line of those lands fronting onto the easterly limits of Esna Park Road on the east, the northerly limit of Steeles Avenue East on the south and the rear property line of those lots fronting onto the westerly limits of Victoria Park Avenue on the west. The study area, which encompasses all properties within 350 to 400 metres of the lands in question, follows from the suggested potential influence areas associated with Class One and Two industrial facilities as set out in the Ministry of the Environment, Conservation and Parks D6 Guideline. It is noted that, based upon



our field observations, no Class 3 industrial uses exist within the immediate vicinity of the subject lands. A brief description of the land uses adjacent to and within 120 metres of 81-131 Telson Road is provided below.

North

To the north of the site and north of Telson Road there are five properties developed for a range of light industrial - commercial and storage uses and activities which are briefly noted as follows, namely:

- 22 Telson Road  
Amplis, Photographic and Consumer Electronic Sales, Service and Distribution
- 40 - 50 Telson Road  
Eco Houzng, Kitchen Appliance Sales and Service  
Vulcan Electric Industrial Grade Battery Sales  
Digi Wave, Consumer Electronic Sales
- 80 Telson Road  
Ecom Food Industries - Offices, Food Extract Production and Warehouse Facility
- 150 Telson Road  
JIA JIA Group - International Moving and Storage Facility & U Haul Truck Rental Facility  
Best Deal Tire Sales - retail sales and service facility
- 200 Telson Road - Multi Tenant Building  
Offices / Commercial & Light Industrial Uses

East

South of Telson Road and within 120 metres of the easterly property line of the subject lands, there are two properties which include a variety of uses inclusive of wholesale distribution, service providers and the retail sale of home furnishings, namely:

- 151 Telson Road  
Pharma Systems Inc. - Wholesale Distributor of Pharmaceutical and Hospital Supplies
- 211 Telson Road - Multi Tenant Building  
All Stream - Business Communications Provider / Offices & Warehouse Facility  
LICA Group Inc. - Home Furnishing Sales  
Kid's Kitchen - School Lunch Service Provider

South

To the south of the rear property line of 81-131, there is one property holding developed in association with the Liberty Data Centre located at 3500 Steeles Avenue East. That portion of the data centre property within 120 metres of the subject lands is developed for the purposes of a relatively large off-street parking facility for employees and visitors. The structure, in which the data centre is situated, is removed greater than 120 metres from the subject lands, south of the internal roadway and parking facility which extends from Esna Park Drive on the east to Victoria Park Avenue on the west, north of Steeles Avenue East.

West

To the west, there are three properties which are wholly or partially within 120 metres of the subject lands. The properties in question are developed and/or utilized for a range of commercial and light industrial warehouse purposes, namely:

- 61 Telson Road  
Winnec - Wholesale Distribution & Sale of Kitchen Cabinet Accessories  
ByGO / EZ Selection - Sale of Stationary Products and Office Supplies
- 31 Telson Road - Multi Tenant Building  
vacant premises previously occupied by a printing shop and hardwood sales establishment
- 7261 Victoria Park Avenue  
Ranka Enterprises Inc.  
Corporate Offices & Warehouse for Wholesale Distribution of Clothing and Apparel

To further assist in the evaluation of the appropriateness of providing for the recognition of 81-131 for a range of office and quasi commercial - light industrial uses, a drawing illustrating the contextual setting of the subject lands is attached hereto as Appendix "F". Uses throughout the study area, which front upon Telson Road, Esna Park Drive, Victoria Park Avenue and Steelcase Road East, have been classified as follows, namely:

- Corporate Offices (i.e. Liberty Centre / IBM Campus)
- Business & Professional Offices
- Retail Commercial / Wholesale Establishment  
( includes retail sale of automotive parts and accessories)
- Automotive Sales / Storage Compound
- Multi Unit Commercial - Industrial Complex
  - Offices / Commercial/ Light Manufacturing & Fabricating Operations
  - Moving and Storage Facilities / Truck Rental Establishments
  - Service Related Industries & Shop Facilities
- Wholesale & Warehouse Distribution Facilities (inclusive of offices)
- Class One & Two Industrial Facilities  
(i.e. fully enclosed manufacturing, processing, fabrication & assembly operations)
- Vacant Buildings

Based upon our analysis, the study area contains a broad range of commercial and light industrial activities which include business and professional offices and related activities. With the exception of the Corporate Campuses of IBM and the Liberty Centre, being the large property holdings to the south and south-east of 81-131 Telson Road and which occupy approximately 26.7 hectares (i.e 66 acres), the predominant forms of land use present within the study area are multi-unit, quasi commercial - industrial structures, retail commercial / wholesale establishments, wholesale & warehouse distribution facilities and Class One and Two industrial uses involved in the manufacturing, processing and fabricating of products. In total, such uses occupy upwards of 49 percent of the land base within the study area.



It is significant to note that, if those lands associated with the IBM and Liberty Centre campuses are excluded from the analysis, lands developed in association with retail commercial and wholesale establishments, wholesale and warehouse distribution facilities and multi unit, quasi commercial - industrial structures, which frequently include significant office components, are the predominant form of land use within the study area and lands designated as a General Employment area. The analysis indicates that the aforementioned uses occupy approximately 24 hectares or slightly greater than 71 percent of the properties within the study area designated as a General Employment Area. It follows that the requested relief from By-law No. 108-81, being to recognize an existing multi-use, quasi commercial - industrial complex, inclusive of an office building, is consistent with the use of a significant portion of the land base within the immediate vicinity of 81 -131 Telson Road. The distribution of land uses within the study area, by nature of the existing use and site area, official plan designation and zoning, is documented in the table below.

Land Use Distribution Analysis  
Telson Road Study Area

Description	Area (ha.)	Percentage Distribution
<b>Existing Land Use</b>		
Corporate Centre	28.67	41.7%
Automotive Sales / Storage Compound	3.52	5.5%
Business & Professional Offices / Retail Commercial	2.41	3.8%
Retail Commercial / Wholesale Establishments (Includes Retail Sale of Automotive Parts & Accessories)	5.35	8.4%
Multi-Unit Commercial - Industrial Complex (Includes Moving & Storage Facilities / Truck Rentals / Service Commercial Uses)	13.49	21.1%
Wholesale / Warehouse & Distribution Facilities	5.19	8.1%
Class One / Two Industrial Uses (Manufacturing / Processing / Fabricating Facilities)	6.8	10.6%
Vacant Building	0.46	0.7%
Total All Properties	63.89	100.0%
<b>Official Plan Designation</b>		
Business Park Employment	28.67	41.7%
Service Employment	3.52	5.5%
General Employment	33.7	52.7%
Total All Properties	63.89	100.0%
<b>Zone Classification</b>		
Commercial Corridor Area (CCA) Zone	2.35	3.7%
Limited Commercial (MC) Zone	27.84	43.6%
Select Industrial (M) Zone	33.7	52.7%
Total All Properties	63.89	100.0%

### 3. Land Use Planning Framework

#### 3.1 City of Markham Official Plan

The lands in question are designated as an Employment Area on Map 1, entitled Markham Structure, to the Official Plan of the City of Markham. The general policies applicable to lands designated in this manner are set out, in part, under Section 5, entitled A Strong and Diverse Economy.

The policy framework applicable to Employment Areas speaks to the need to ensure there is an adequate supply of employment lands, not only to provide for the creation of new employment opportunities but also the retention of existing businesses and the employment base associated therewith. The overall policy direction is to provide for a diversity of businesses, by type and size and in suitable locations, which allows for a range and mix of employment opportunities.

In addition to providing for a stable and enhanced municipal tax base, one of the key principles identified is ....*"to protect employment areas from incompatible development including sensitive lands uses"*. Sensitive land uses are defined to include, among other uses, day care centres, places of worship and educational and health facilities. No portion of the lands and/or buildings affected by this application include a sensitive form of land use or a land use which is considered to be incompatible with the existing or proposed use of adjacent lands for employment purposes by reason of potential land use conflicts.

Reference is made to Map 3, entitled Land Use, to the City of Markham Official Plan whereon the designation of Employment Areas is further refined based upon the nature, diversity and planned function of the employment area. In accordance with Map 3, the lands in question, municipal address of 81-131 Telson Road, are designated within the General Employment land use classification. The subject property is conceptually delineated on an extract of Map 3 attached hereto as Appendix "G".

With the exception of the lands associated with the Liberty Centre and the IBM Campus, immediately to the south and south-east of 81-131 Telson Road, which are designated within the Business Park Employment classification, and, the site of Don Valley North Toyota and the associated motor vehicle compound, located adjacent northerly limits of Steeles Avenue East, west of Victoria Park Avenue in the south-west extremity of the study area, which are designated within the Service Employment land use classification, the balance of the lands within the study area are designated within the General Employment land use classification. Accordingly, our review of the policy framework will focus upon those policies applicable to lands designated within the General Employment land use classification, that is the classification applicable to the subject lands and the balance of the properties within the study area.

In accordance with the introductory policies set out under Section 8.5 of the City's Official Plan, the intent of the General Employment land use classification is to accommodate established and new industrial and warehouse uses. Three key elements of the general policies applicable to Employment lands, which are relevant in the review and consideration of this application, are noted as follows, namely:

- to provide for a range of employment uses at appropriate locations;
- to protect and preserve Employment Lands from land uses that may affect the continued viability of existing employment uses and their expansion in the future; and,



- ensure that new development is compatible with the character and pattern of adjacent and surrounding development.

In accordance with Sections 8.5.5.2 and 8.5.5.5 of the City of Markham Official Plan, lands designated within the General Employment land use classification are intended for manufacturing, processing and warehousing in single and multiple unit buildings. Additional uses permitted include the outside storage of goods and materials provided the storage area is located to the rear or side of the building; retail and/or service uses subject to gross floor area limitations, and office uses accessory to the primary manufacturing, processing or warehousing use and located within the same premises as the primary use. A trade school, which is defined to mean ... *"premises where adults are taught a trade in a classroom setting"*, is also a permitted use within the General Employment land use classification.

Section 8.5.5.4 of the Markham Official Plan sets out a series of land uses not specifically permitted on lands designated within the General Employment classification. Among other uses, the uses specifically noted as not permitted include a private school, which is defined to mean...*"an academic school which secures the major part of its funding from sources other than governmental agencies"*, and, a commercial storage facility.

It is noted that no portion of the subject lands are utilized for the purposes of a private academic learning facility. While areas below grade are utilized for storage lockers, it is suggested that the lockers do not constitute a commercial storage facility which may be characterized as requiring a relatively large site area and which primarily consists of garage like, multi unit structures, with direct vehicular access to individual units. The below grade storage lockers located at 81-131 Telson Road are relatively small, having an area which varies from less than 3 to upwards of 14 square metres (i.e. 25 to 150 square feet), the average size being in the order of 5 square metres (i.e. 54 square feet).

In addition to the permitted uses referred to in Sections 8.5.5.2 and 8.5.5.5, Section 8.5.5.3 of the City of Markham Official Plan provides for the introduction of *"discretionary uses"* which are defined to mean ...*"uses that are not intended to be permitted as-of-right in the implementing zoning by-law, and, are not intended to be permitted on every property within a designation, but may be permitted subject to review of a specific development application for zoning approval, subject to the criteria set out in this Official Plan."* The discretionary uses permitted are noted to include ancillary uses which, among other uses, include a commercial school and office uses, other than medical offices. With the exception of the criteria applicable to ancillary restaurant uses, which are not relevant in the context of the application before the Committee, consideration is to be given to the following criteria in the determination of the appropriateness of an ancillary use on lands designated within the General Employment classification, namely:

- i. that the combined gross floor area devoted to ancillary uses and accessory uses does not exceed 15 percent of the total floor area of the building;
- ii. that the ancillary and accessory uses be located only on the ground floor of the building;
- iii. that an ancillary office use only be located in a building located on an arterial road and that the maximum gross floor area of the office use not exceed 300 square metres; and,
- iv. that the gross floor area of any premises devoted to an ancillary service uses not exceed 100 square metres.

Additional criteria applicable to assessment of an application concerning the introduction of "discretionary uses" are set out in Section 8.5.1.3 of the Official Plan. An evaluation of this application in the context of the criteria noted above and those set out under Section 8.5.1.3 of the Plan is provided in a subsequent section of this submission.

### 3.2 Zoning By-law No. 108-81, As Amended

The property in question is within an area covered by By-law No. 108-81, as amended, of the City of Markham. We understand that By-law No. 108-81 was enacted by the Council of the former Town of Markham on March 26, 1981, and subsequently approved by the Ontario Municipal Board on December 15, 1981, that is subsequent to the issuance of a building permit circa 1976 for the existing structures located at 81- 131 Telson Road. An extract of the Consolidated Zone Map, as compiled by the City of Markham, is attached to this submission as Appendix "H" whereon the subject lands are outlined in red.

The subject lands are zoned within the *Select Industrial (M) Zone* under By-law No. 108-81. Based upon readily available information obtained from the City of Markham, we are not aware of any site specific amendments to By-law No. 108-81 which would affect the lands in question or the adjacent properties zoned within the *Select Industrial (M) Zone*. Similarly, we are not aware of any variance applications approved in relation to the subject lands.

Within the *Select Industrial (M) Zone*, the industrial uses permitted under Section 7.1.1 of By-law No. 108-81 are noted as follows, namely:

- i. *the warehousing of goods and materials;*
- ii. *the assembly of manufactured goods;*
- iii. *the manufacture of goods within enclosed buildings;*
- iv. *the repair and servicing of goods;*
- v. *data processing centres and computer related functions, including education and administration centres, and including related market research, analysis and service facilities and related supporting sales and including data and documentation processing centres and related marketing, sales and service and other supporting uses (ibid);*
- vi. *research laboratories;*
- vii. *printing establishments; and,*
- viii. *other industrial uses similar to the above.*

With the exception of the term Warehouse, Section 2 of the By-law, does not include definitions of the above noted terms referred to as permitted uses. A warehouse is defined to mean "...a building where goods and wares are stored, but shall not include a retail store".

By way of reference to Section 7.1.1(b) of By-law No. 108-81, other uses permitted within the *Select Industrial (M) Zone* include private clubs and health centres. The terms private club and health centres are defined as follows, namely:

*Club, Private means a building or part of a building used as a meeting place for members of an organization and may include a lodge, fraternity house or sorority house, and a labour or union hall. All uses permitted in a Health Centre, as defined in this by-law, shall be permitted in a Private Club, subject to the limitations set out in the definition of a Health Centre.*



-and-

*Health Centre means a building or part thereof which is used for the purpose of a gymnasium, exercise room, steam room, sauna, squash courts, sun room, swimming pool, massage room or any other use related to physical fitness. A massage room must be associated with at least one (1) other use specifically mentioned above and such massage room must be operated by a professional masseur.*

Section 7.1.2, entitled Prohibited Uses, refers to Section 4.3.7 of By-law No. 108-81 which identifies a listing of prohibited uses within the area covered by By-law No. 108-81. Typically such uses are of a heavy industrial nature and may be characterized as exhibiting potential for adverse environmental and/or off-site impacts. In addition to the extensive list of prohibited uses referred to under Section 4.3.7, facilities for the repair and servicing of internal combustion engines, motor vehicles and similar uses are also prohibited by way of Section 7.1.2 of By-law No. 108-81. No portion of any of the buildings located at 81-131 Telson Road is utilized for a purpose identified as a Prohibited Use under Sections 4.3.7 or 7.1.2 of By-law No. 108-81.

#### 4. Conformity With Zoning By-law Provisions

An analysis of the regulatory provisions applicable to the use of the subject property and compliance with the minimum lot area, frontage, yard requirements and other provisions is provided on Appendix "I1" to this submission. A list and description of existing tenants, as of February 2019, which occupy premises within the buildings located at 81-131 Telson Road, together with an analysis of the associated off-street parking space requirements, is attached hereto as Appendix "I2".

To summarize, while the majority of the multi-use commercial - industrial units are occupied by uses which may be characterized as either light industrial activities or wholesale distribution and warehouse uses which include ancillary offices and/or a limited component of retail sales, the analysis indicates that neither the stand alone two storey office structure or the below grade storage lockers are uses permitted within Select Industrial (M) Zone. In addition, while there is no apparent deficiency in terms of the supply of off-street parking facilities based upon observed utilization levels, an assessment of the parking requirements of By-law No. 108-81, as amended by By-law No. 28-97, relative to the tenant/occupancy characteristics of each premises indicates that a deficiency exists. In accordance with the current standards of By-law No. 108-81, as amended by By-law No.28-97, some 117 parking spaces are required.

At the present time, there are some 51 defined parking spaces, inclusive of two accessible spaces, in the front yard opposite the four structures which currently serve the needs of existing businesses. While not defined, additional off-street parking spaces are available in the rear yard. As illustrated on the drawing illustrating existing site conditions (refer to Appendix "C"), sufficient area is available to provide for an additional 36 spaces in the rear yard to accommodate any demand for parking in excess of that available in the front yard. Upon delineation of the rear yard parking areas, it would be possible to provide for a total of 87 parking spaces on the subject property.

Based upon discussions with our Client, we are advised that no complaints have been received in relation to the adequacy of off-street parking facilities at 81-131 Telson Road by either tenants or visitors to the site. It is suggested that due to the differing nature of the businesses and the variation in the peak parking demand periods, that adequate parking exists to service the needs of existing tenants and businesses.

In addition to the foregoing issue concerning the provision of parking spaces, the existing as built conditions are not in compliance with the requirements of Section 5.1 of By-law No. 28-97 regarding the provision of accessible parking spaces, Section 4.5.2 of By-law No. 108-8, specifically the area to be provided as part of a loading and unloading space, and, the requirements of Section 4.7.1(b) concerning the minimum width of the landscaped open space area required adjacent the southerly limit of Telson Road.

#### 5. Nature of Relief Requested

Reference is made to Appendices "I1" and "I2", whereon the nature and scope of the variances required to the regulatory provisions applicable to the subject lands are identified. Based upon our analysis, the nature of the relief required from By-law No. 108-81, as amended by By-law No. 28-97, to recognize the existing use and as built site conditions of those lands legally described as forming Lots 35 and 36 of Registered Plan 9001, municipal address of 81-131 Telson Road, is summarized as follows, namely:

- i. that, notwithstanding the uses permitted within the Select Industrial (M) Zone, as specified under Section 7.1 or any other provision of By-law No. 108-81, as amended, to the contrary, the following uses shall also be permitted, namely:
  - a two storey structure used for the purposes of business and professional offices, inclusive of private commercial schools, dance studios, art studios or other similar cultural activities, provided the maximum ground floor area of the building does not exceed 445 square metres and the maximum floor area ratio does not 12 percent; and,
  - below grade storage lockers having a maximum gross floor area of 470 square metres exclusive of stairways and utility rooms beneath Units 87,89,91,95 and 97 Telson Road and Unit 99 Telson Road as shown on the drawing illustrating Existing Site Conditions, dated March 7, 2019, prepared by McDermott & Associates Limited (i.e. refer to Appendix "C");
- ii. that, notwithstanding any other provision of By-law No. 108-81, as amended, ancillary offices and retail sales shall be permitted in association with a use permitted within the Select Industrial (M) Zone provided that, within any individual premises, the maximum combined gross floor area devoted to such ancillary uses and activities shall not exceed 15 percent of the gross floor area of the premises, and, that any areas used for such purposes shall be physically separated, by a floor to ceiling wall or similar partition, from the balance of the floor area devoted to the primary permitted use;
- iii. that, notwithstanding the provisions of Section 4.7.1(b) of By-law No. 108-81, as amended, the minimum width of the landscaped open space strip adjacent the southerly limits of Telson Road shall be 2.5 metres;
- iv. that, notwithstanding the minimum parking space requirements as set out in Sections 3 and 5.1 of By-law No. 28-97, the minimum number of parking spaces, measuring 2.6 metres by 5.8 metres, shall not be less than one parking space for each 50 square metres of gross floor area provided that a minimum of two accessible spaces, measuring 4.1 by 5.8 metres, are provided in the front yard;
- v. that, notwithstanding the minimum size of a loading space, as set out in Section 4.5.2 of By-law No. 108-81, loading spaces located in the side yards and which are accessible at grade shall have a



width of 6 metres measured parallel to the wall of the structure, a depth of 3 metres measured perpendicular to the wall of the structure, and, a minimum clearance of not less than 4.2 metres; and,

- vi. that, notwithstanding the minimum size of a loading space, as set out in Section 4.5.2 of By-law No. 108-81, truck level loading spaces located in the rear yards shall have a width of not less than 3.6 metres measured parallel to the wall of the structure, a minimum depth of 4.9 metres measured perpendicular to the wall of the structure, and, a minimum clearance of 4.2 metres, exclusive of any area which may be utilized for the purposes of off-street parking.

#### 6. Assessment of the Relief Requested Relative to the Approved Policy Framework

In considering the nature and scope of the relief requested by way of a variance to the provisions of By-law No. 108-81, as amended, regard should be had for the approved planning framework, that is the provisions of the Planning Act, the policies set out in the Official Plan, and, the effect of the variance in terms of the continued use of the property for the purposes for which it was developed circa 1976. The following sections of this submission endeavour to address each of the legislative requirements.

##### 6.1 Section 45(2)(a)(ii) of the Planning Act

Section 45(2)(a)(ii) of the Planning Act states that...*"where any land, building or structure, on the day the by-law was passed, was lawfully used for a purpose prohibited by the by-law" the Committee ... "may permit the use of such land, building or structure for a purpose that, in the opinion of the Committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed, if the use for a purpose prohibited by the by-law or another use for a purpose previously permitted by the Committee continued until the date of the application to the Committee"*. In the context of this application, our Client is seeking relief to recognize the use of the lands, legally described as Lots 35 and 36 of Registered Plan 9001, municipal address of 81 -131 Telson Road, for the purposes for which the buildings were originally constructed circa 1976 -1978, that is a two storey office building having a gross floor area of approximately 886 square metres, and, a below grade area developed and utilized for the purposes of storage lockers in association with a multi-unit commercial - industrial complex.

As previously noted, our Client purchased the subject property in 1998. Our Client advises that no records were provided and/or exist in relation to the original building permit which the Municipality advises was issued in 1976. The readily available information provided by the Municipality, namely an archived record of Building Permit No. 7607300 000 00 AB issued on December 8, 1976, simply refers to the zoning of the lands under By-law No. 108-81, the building type as Industrial, and that the purpose of the permit is to allow the erection of...*"4 multiple occupancy industrial spec. buildings"*. We are further advised by Staff at the Town of Markham that all original documents associated with this building permit have been disposed of in accordance with the Town of Markham's retention by-laws. It follows that neither our Client or the City of Markham can produce plans and/or drawings which may have accompanied the issuance of the building permit in 1976.

It remains that a building permit was issued for four structures. There is no evidence to suggest that the four buildings have been substantially altered in any way which would be effective to change the purpose



for which the buildings were originally constructed, namely three multi-unit commercial - industrial buildings and a 2 storey office building. Similarly, we are unable to confirm the zoning in effect prior to the introduction of By-law No. 108-81 on March 26, 1981.

Given that there have been no exterior alterations and no significant interior alterations which would change the configuration of the premises, and, that prior to July and August of 2017, no orders to comply had been issued by the City of Markham, it is suggested that the use of the property for the purposes of a two storey structure containing business and professional offices and three multi-unit structures developed and utilized for quasi commercial - industrial purposes, inclusive of below grade storage lockers, has continued since completion of the four structures in 1978. Presumably Building Permit No. 7607300 000 00 AB, issued on December 8, 1976, was in conformity with the zoning by-laws, if any, in force and effect at that time. No documentation has been made available to the Client by the City of Markham during the course of recent meetings to suggest otherwise.

As a result, and with a view to resolving the continued use of the property for the purposes which presently exist today, our Client is seeking relief by way of a decision pursuant to Section 45(2)(a)(ii) of the Planning Act to permit the continued use of the four structures located at 81-131 Telson Road, namely a two storey office building having a gross floor area of approximately 886 square metres, and, three multi-unit buildings utilized for quasi commercial - industrial purposes as set out in the previous sections of this submission. It is respectfully submitted that such uses have continued since the completion of construction of the structures circa 1978.

## 6.2 City of Markham Official Plan

The application before the Committee is considered to be in conformity with the general intent of Section 5 of the Official Plan of the City of Markham as applies to Employment lands. Approval of the application will provide for the retention of existing businesses and the employment base associated therewith as well as promoting a diversity of businesses which reinforces the range and mix of employment opportunities consistent with the character of this area. Furthermore, approval of the application will assist in maintaining a stable municipal tax base without allowing for the introduction of incompatible sensitive land uses which would be effective to destabilize the area as a result of potential land use conflicts.

In accordance with Sections 8.5.5.2 and 8.5.5.5 of the City of Markham Official Plan, lands designated within the General Employment land use classification are intended for manufacturing, processing and warehousing in single and multiple unit buildings. Additional uses permitted include retail and/or service uses subject to gross floor area limitations, and office uses accessory to the primary manufacturing, processing or warehousing use and located within the same premises as the primary use. It follows that the requested relief, which provides for ancillary office and retail sales in association with quasi commercial industrial uses such as warehouses, contractor's establishments and/or similar industrial uses such as custom workshops, is in keeping with the intent of the General Employment classification.

Additional criteria applicable to assessment of an application concerning the introduction of what are referred to as "*discretionary uses*" are set out in Section 8.5.1.3 of the Official Plan. The applicable criteria address the appropriateness of the built form and scale of the use with the planned function and policies of the employment land use designation; the appropriateness of the site from a traffic impact perspective; compliance with the criteria established in the policies applicable to the General Employment land use

classification; the compatibility of the proposed use with other existing uses on the same lot and adjacent land uses inclusive of compatibility of sensitive land uses; and, the means by which impacts, if any, may be mitigated.

It is submitted that the existing office building and below grade storage lockers are of an appropriate built form and scale relative to the planned function of the area and the nature of adjacent land uses. Approval of the application will not prejudice or impair the existing or planned use of adjacent properties. Similarly, there is no evidence to suggest that the existing two storey office structure and below grade storage units generate inordinate levels of traffic which would adversely affect traffic movements on Telson Road or the adjoining streets. Further, with respect to traffic, we are unaware of any documentation or studies prepared by the City of Markham which suggest that the existing uses located at 81 -131 Telson Road are effective to impair the function of Telson Road as a local road serving a quasi commercial-industrial area, an area which today is characterized by a broad range of office, commercial and light, typically wholly enclosed, industrial activities.

In accordance with Section 45(9) of the Planning Act, the Committee of Adjustment may impose conditions to address any concerns arising from the review and approval of this application. It is submitted that conditions, similar in scope and nature to those set out in Section 5 of this submission are appropriate to ensure that the use of the property located at 81 -131 Telson Road may continue without adverse impacts upon the use of adjacent lands and in a manner which does not impair the long term planning objectives for this area as set out in the Official Plan for the City of Markham. In this context, the requested relief and suggested conditions clearly serve to maintain the existing built form as opposed to providing for enlargement of the existing uses, most notably the two storey office building and the below grade storage lockers.

In summary, while ancillary office uses are permitted, a stand alone two storey office building is not to be encouraged on lands designated within the General Employment classification. Office uses may, however, be allowed as a discretionary use within the General Employment classification where the property fronts upon an arterial road and the gross floor area of the office use does not exceed 300 square metres. While the existing two storey office structure, which has a gross floor area of upwards of 886 square metres, does not comply with the above noted criteria, it is a use which has existed at this location since 1978, prior to the adoption of the current policy framework.

Approval of the variance application and recognition of the continued use of the two storey office building for business and professional offices will not detract from the overall intent of the Official Plan or compromise the use of adjacent properties for those uses permitted in the General Employment land use classification. Rather, such a decision is consistent with the approved policy framework insofar as office uses, of a limited scale, may be permitted on lands designated within the General Employment area classification where there is no potential for land use conflicts, as in this instance. This position is reinforced by the presence of well established office components on the neighbouring properties within the immediate vicinity of the lands in question. Similarly, the indoor storage of goods and materials within storage lockers is not of such a scale as to detract from the use of adjacent lands and is quite distinct and different from a commercial storage facility for the reasons previously outlined in this submission.

Given that no other use may be made of the existing office structure, the building may ultimately become vacant should the application not be favourably received by the Committee. Such a scenario is contrary to the intent of providing for a stable municipal tax base and the retention of existing employment



opportunities. It is therefore submitted that, from a land use planning perspective, the continued use of the existing office building for such purposes as business and professional offices and the below grade storage lockers in portions of the quasi commercial -industrial units, is both reasonable and appropriate.

### 6.3 By-law No. 108-81, As Amended

The application is requesting relief from various provisions of By-law No. 108-81, as amended. Specifically relief is being sought to recognize the existing built form and existing use of the property which has existed since construction in 1978. In addition, relief is also sought with respect to the current parking standards, loading and unloading space requirements, and, a reduction in the extent of the requirement for a landscaped open space strip adjacent Telson Road.

It would appear that the parking and loading space standards applied to this site upon the issuance of the building permit in 1976 were significantly lower than those introduced upon the enactment of By-law No. 108-81 and the more recent standards introduced by way of By-law No. 28-97, being an amendment to By-law No. 108-81. As is apparent from the drawing illustrating existing site conditions, an opportunity does not exist, short of demolition of the office building and portions of the remaining three structures, to modify the existing built form to facilitate conformity with current by-law requirements.

Given the deficiency relative to the standards which apply at the present time under By-law No. 108-81, as amended, it is suggested that it would be appropriate to set a parking requirement for the site as a whole based upon the existing as built conditions and to state, as a condition to approval of the application, that no increase shall be permitted in the gross floor area of the two storey office building and/or the multi unit commercial -industrial units and the associated below grade storage lockers. Similarly, it is suggested that it would be appropriate to recognize the existing loading and unloading areas, both the at-grade and truck level docks, as exist at the present time in association with each commercial - industrial unit.

The alternative is to deny the application and not allow the requested relief. The effect of such a decision would mean that neither building or occupancy permits for new tenants could be issued by the City of Markham due to non-compliance with the provisions of the zoning by-law. As a consequence, it is reasonable to anticipate that, over time, a number of the units would become vacant. To illustrate this point, application of the current general standard of one space for each 40 square metres of net floor area would mean that something in the order of 2,040 square metres of the 4,063 square metres, inclusive of the area associated with the storage lockers, could be occupied by industrial tenants. In other words, upwards of 50 percent of the existing floor area would not be eligible for a building or occupancy permit to facilitate interior renovations as may be required by existing or new tenants. This would equate to the office building and the more westerly building, having a combined gross floor area of slightly greater than 2,300 square metres, eventually becoming vacant and underutilized.

Such a situation would result in an unnecessary degree of hardship. Section 34(9) of the Planning Act states that no by-law passed under Section 34...*"applies to prevent the use of any land, building or structure for any purpose prohibited by the by-law if such land, building or structure was lawfully used for such purpose on the day of the passing of the by-law, so long as it continues to be used for such purposes"*. In the absence of any documentation which confirms that the use of the buildings on the date of passing of By-law No. 108-81, which has continued to the present time, was not a lawful use of the property, it is submitted that the enforcement of the provisions of By-law No. 108-81 would, as previously noted, be



effective to create a degree of unnecessary hardship contrary to the intent of Section 34(9) of the Planning Act.

Finally, there is a need to grant a variance in relation to Section 4.7.1 (b) of By-law No. 108-81 to reduce the width of the landscaped open space strip adjacent Telson Road from 6 metres to 2.5 metres. Given the existing built form of the site and the location and configuration of the off-street parking areas in the front yard, it is not possible to comply with the stated requirement.

#### 7. Concluding Remarks

Although the existing two storey office building and the multi-unit quasi commercial-industrial structures, inclusive of the below grade storage lockers, are somewhat dated and not in conformity with current zoning regulations, the functional life of the structures will continue for many years to come. It follows that the two storey office building, multi-unit commercial-industrial units and storage lockers assist in meeting current demands for office and commercial - industrial floor space by small businesses seeking a location in the City of Markham. The net effect is a positive contribution to employment opportunities and the municipal tax base without the potential for adverse impacts upon the well established use of neighbouring properties, the local road network and municipal infrastructure.

The relief being sought by our Client is not and will not provide for redevelopment and intensification of the built form. Rather, it is recognized that in granting the requested relief, conditions may be imposed to prohibit intensification of the built form. Should, at some time in the future, it be determined that redevelopment of the property represents a feasible and financially viable opportunity, it will be necessary to comply with the approved Official Plan policy framework and zoning by-laws in effect at that time.

While it is recognized that the relief being sought from the provisions of By-law No. 108-81, as amended, is significant relative to the current zoning regulations, it is submitted that a favourable decision which provides for the continuation of the use of the two storey office structure, the multi-unit quasi commercial -industrial units, inclusive of the below grade storage lockers, and, which includes conditions regarding the design, location and extent of the off-street parking and loading areas, is appropriate in this instance. This application follows from the fact that the existing built form and use of the structures for a range of business and professional offices and quasi commercial-industrial uses has, to the best knowledge of our Client, continued since construction circa 1976-1978 in accordance with a building permit issued by the former Town of Markham, notwithstanding that such uses are not considered to be in conformity with the provisions of the Select Industrial (M) Zone of By-law No. 108-81 adopted on March 26, 1981.

At no time prior July of 2017, had the Municipality issued an Order to Comply with the provisions of the Zoning By-law. Subsequent to the issuance of Orders to Comply in July of 2017 and following a series of meetings with Municipal Staff, a decision was made to proceed with the application for a variance pursuant to the provisions of Section 45(2)(a)(ii) with a view to resolving issues concerning compliance with the zoning by-law. Approval of the application will allow for continuation of the existing use of the buildings without the need to defend against possible legal action and will avoid unnecessary hardship. In addition, approval of the variance will allow for the issuance of building and occupancy permits in response to interior renovations as may be required by existing or new tenants.

Committee of Adjustment  
City of Markham  
Re: 81 -131 Telson Road

-16-

September 5, 2019

In conclusion and on behalf our Client, we trust that the supporting documentation have been prepared in sufficient detail to allow for favourable consideration of the application filed pursuant to the provisions of Section 45(2)(a)(ii) of the Planning Act. Should Staff of the City of Markham or the Members of the Committee require any additional information to assist in the decision making process, please do not hesitate to contact the undersigned.

Sincerely yours,  
McDermott & Associates Limited



John McDermott, M.C.I.P., R.P.P.  
Principal Planner

copy to: Mr Keith Lahey  
Treasurer & Secretary  
1217862 Ontario Limited

Devry Smith Frank LLP  
Attention: Mr. Marc Kemerer

**McDERMOTT & ASSOCIATES LIMITED**  
**LAND USE & ENVIRONMENTAL PLANNING CONSULTANTS**