

Memorandum to the City of Markham Committee of Adjustment

January 15, 2019

File: A/153/18
Address: 91 Anderson Ave Unit 7 & 8, Markham
Applicant: K&B Tires & Mags Inc.
Agent: (none)
Hearing Date: Wednesday January 23, 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, Select Industrial with Limited Commercial (M.I.C.) Zone, as amended:

a) **Section 7.1 & 5.23**

to permit retail sales and installation of tires, whereas the by-law does not permit the use.

BACKGROUND

Property Description

The 4,513.7 m² (1.12 ac) subject property is located on the east side of Anderson Avenue, north of Bur Oak Avenue and East of Markham Road. There is an existing one-storey industrial condominium building on the property containing 13 units. The applicant is requesting permission to permit the retail sales and installation of tires in units 7 and 8, which is an existing use. According to the applicant, this use has operated at this location for approximately 25 years. The subject units occupy approximately 235 m² (2,529.5 ft²) of the existing industrial building. The site has vehicular access from Anderson Avenue.

Existing one-storey industrial buildings are located to the north and west along Anderson Avenue. Residential dwellings are located to the east, across the Metrolinx Stouffville Go Line. Mount Joy Go Station is located to the south of the property across Bur Oak Avenue. The eastern portion of the property is located within the Regional Storm Floodplain, the Greenway Zone (2014 Official Plan) and bordered on the east by Hazard Lands (1987 Official Plan). Notwithstanding this, the proposed use is outside of these designations and as such not affected.

Proposal

The applicant has submitted a variance application to permit the retail sales and installation of tires within units 7 and 8 of the building. As noted, the variance pertains to an existing use that has been located on the subject property for approximately 25 years. The applicant advises the existing use does not include automotive repairs and service other than the sales, installation and balancing of tires. No external changes are proposed to the building or to the property.

Official Plan & Zoning

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

The subject property is designated "Service Employment" in the 2014 Official Plan, which provides for a range of uses including light industrial and warehousing, office, motor vehicle body shop or repair facility with no accessory outdoor storage and, small-scale retail and services uses serving and supportive of other business uses. The 2014 Official Plan identifies that a portion of the subject property is located within the Greenway Zone. Until a time where a new secondary plan for the Local Corridor – Markham Road Corridor – Mount Joy is approved, the provisions of the Official Plan (revised 1987), as amended, shall apply (Section 9.3.7.3 of the 2014 Official Plan).

Official Plan 1987

The 1987 Official Plan designates the subject property as 'Major Commercial Area' which provides for retail and service uses, offices, banks and financial institutions and other similar uses consistent with the planned function and policies of this designation. Lands designated 'Major Commercial Area' may be zoned to permit retail and service uses, as well as discretionary uses which include automobile repair service (excluding auto body paint and repair). The eastern portion of the site is designated 'Hazard'. Areas designated as 'Hazard' pertain to lands that have qualities that make them dangerous or unsuitable for development such as lands within the Regulatory Flood Plain as defined by the Toronto Region Conservation Authority (TRCA).

The existing building and subject units are located within the "Major Commercial Area' designation and are not impacted by the 'Hazard' designation also applicable to the subject lands. The existing use subject to this variance request is provided for in the 1987 Official Plan.

Zoning By-Law 88-76

The subject property is zoned Select Industrial with Limited Commercial (M.I.C) under By-law 88-76, as amended, which permits industrial uses, private clubs, health centres, banks and professional and business offices. Section 5.23 of By-law 88-76 prohibits retail use and does not permit the installation of tires. The proposed development does not comply with the By-law with respect to use.

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

The applicants stated reason for not complying with the Zoning by-law is the "*at present [the existing use is] non-conforming*".

Zoning Preliminary Review Undertaken

The applicant has completed a Zoning Preliminary Review (ZPR) to confirm the variances required for the proposed development.

COMMENTS

Section 45 (1) of The Planning Act outlines four tests that 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.

The applicant is seeking to permit retail sales and installation of tires in units 7 and 8 of the existing one-storey industrial building whereas the by-law does not permit this use. Section 5.23 of Zoning By-law 88-76, as amended, prohibits retail sales and does not permit the installation of tires. This provision is applicable to all zones in the by-law, unless stated otherwise. The intent of prohibiting retail sales in industrial zones is typically to ensure that established employment areas are not converted to retail shopping centres. Staff acknowledge that the existing use subject to the variance request operates differently than a typical retail store, as the majority of customers would purchase tires for installation services at this location.

The proposed use has existed onsite for over 25 years without any City record of complaints. The variance application was submitted with authorization from the Condominium Corporation which represents unit owners within the subject building. The 1987 Official Plan designates the site as 'Commercial – Major Commercial Area' which provides for retail and service uses, as well as

automobile repair as a discretionary use. While the use does not comply with the applicable zoning By-law Staff are of the opinion that the proposed use does not have a significant impact on neighbouring properties and adjoining units within the building; meets the general intent and purpose of the Official Plan.

TRCA Comments

The subject property is located within the Toronto Region and Conservation Authority (TRCA)'s Regulated Area. The eastern portion of the site is located within the Regional Storm Floodplain. TRCA provided comments on January 08, 2019 (Appendix 'C'), stating they have no comments/concerns with the proposal subject to review fees being submitted.

PUBLIC INPUT SUMMARY

No written submissions were received as of January 15, 2018. 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 meets the general intent of the Official Plan, is minor in nature and will permit an existing land use that is desirable for both the subject property and building. Staff note that the requested variance does not meet the general intent of the Zoning By-law which prohibits retail sales, but acknowledge that the existing use operates differently than typical retail uses as it primarily provides sales of tires for installation. Staff recommend that the Committee consider public input in reaching a decision.

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.

PREPARED BY:



Aqsa Malik, Planner, Zoning and Special Projects

REVIEWED BY:



Stephen Cori, Senior Planner, East District
File Path: Amanda\File\18 252739 \Documents\District Team Comments Memo

APPENDIX "A"

CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/153/18

1. The variance apply to the development as long as it remains;
2. The applicant remits the outstanding TRCA Planning Services review fee of \$1,100 to the satisfaction of the TRCA;
3. That the maximum total gross floor area for the retail sales and installation of tires on the subject property is limited to a maximum gross floor area of 235 m² (2,529.5 ft²).

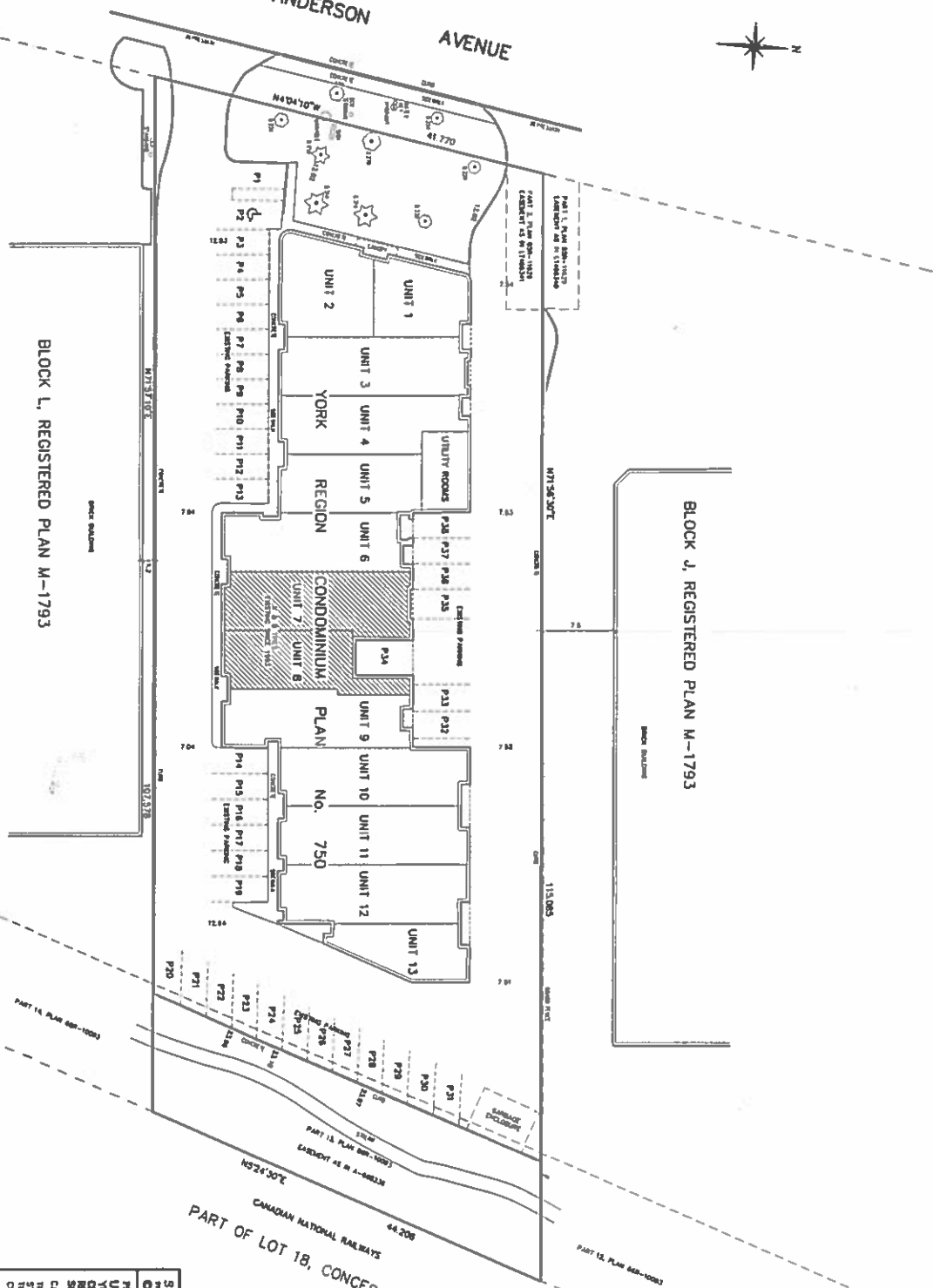
CONDITIONS PREPARED BY:



Aqsa Malik, Planner, Zoning and Special Projects



ANDERSON AVENUE



BLOCK L, REGISTERED PLAN M-1793

BLOCK J, REGISTERED PLAN M-1793

PART OF LOT 18, CONCESSION 8

SITE PLAN - SHOWING EXISTING PARKING SPACES
 © COPYRIGHT 2018, E. W. BOYTER INC.
 REGISTERED PROFESSIONAL ENGINEER
 E. W. BOYTER INC. 141374 REG. NO.
 141375 REG. NO.
 141376 REG. NO.
 141377 REG. NO.
 141378 REG. NO.
 141379 REG. NO.
 141380 REG. NO.
 141381 REG. NO.
 141382 REG. NO.
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 141395 REG. NO.
 141396 REG. NO.
 141397 REG. NO.
 141398 REG. NO.
 141399 REG. NO.
 141400 REG. NO.

E. W. BOYTER INC.
 141374 REG. NO.
 141375 REG. NO.
 141376 REG. NO.
 141377 REG. NO.
 141378 REG. NO.
 141379 REG. NO.
 141380 REG. NO.
 141381 REG. NO.
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 141392 REG. NO.
 141393 REG. NO.
 141394 REG. NO.
 141395 REG. NO.
 141396 REG. NO.
 141397 REG. NO.
 141398 REG. NO.
 141399 REG. NO.
 141400 REG. NO.

3 OCTOBER 2018
 THIS PLAN IS ORIGINAL & CERTIFIED BY SURVEYOR'S SEAL.
 E. W. BOYTER INC.
 141374 REG. NO.
 141375 REG. NO.
 141376 REG. NO.
 141377 REG. NO.
 141378 REG. NO.
 141379 REG. NO.
 141380 REG. NO.
 141381 REG. NO.
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 141396 REG. NO.
 141397 REG. NO.
 141398 REG. NO.
 141399 REG. NO.
 141400 REG. NO.



January 8, 2019

CFN: 60812.01

BY E-MAIL ONLY

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

Dear Mr. Leung:

Re: Minor Variance Application - A/153/18
91 Anderson Avenue, Unit 7 & 8, Markham, ON
Owner: K & B Tires and Mags (Kevin G. Barber)

This letter will acknowledge receipt of the above noted application. Toronto and Region Conservation Authority (TRCA) staff have reviewed this application and provide the following comments.

PURPOSE OF THE APPLICATION

A/153/18

The applicant is requesting relief from the requirements of By-law 88-76, as amended, as it relates to a proposed tire sales and service retail store.

Requested Variance(s) to the Zoning By-law:

a) **Section 7.1 & 5.23:**

To permit retail sales and installation of tires, whereas the by-law prohibits retail sales, whether or not accessory or incidental to a permitted use.

APPLICABLE TRCA REGULATIONS AND POLICIES

Ontario Regulation 166/06 (as amended):

A portion of the subject property is located within TRCA's Regulated Area of the Rouge River Watershed. Based on TRCA mapping, the eastern portion of the subject property is located within the Regional Storm Floodplain. Please note that both the Provincially Policy Statement (2014) and TRCA policies do not support new development within the Regional Floodplain.

APPLICATION SPECIFIC COMMENTS

Based on our review, it would appear that the proposed tire sales and service retail store is partially located within TRCA's Regulated Area. However, given the nature of the proposal in which the variance is to recognize an existing use, TRCA have no objections to the approval of the variance being requested. As such, a permit pursuant to Ontario Regulation 166/06 is not required for the proposed tire sales and service retail store.

APPLICATION FEE

Please be advised, in addition to TRCA's Regulating responsibilities, TRCA has a role as a commenting agency for *Planning Act* applications circulated by member municipalities to assess whether a proposed development may be impacted by the TRCA.

By copy of this letter, the applicant is advised that the TRCA has implemented a fee schedule for our planning application review services. This application is subject to a \$1,100.00 review fee (Variance – Industrial/Commercial/Subdivision/Institutional – Minor). The applicant is responsible for fee payment and should forward the fee to this office within 60 days of this letter.

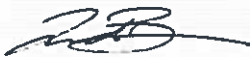
RECOMMENDATION

Based on the above, TRCA has **no objections** to the approval of Minor Variance Application A/153/18 subject to the following condition being addressed to our satisfaction:

1. The applicant remits the outstanding TRCA Planning Services review fee of \$1,100 to our satisfaction.

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

Sincerely,



Linda Bui
Planner, Planning and Development
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Extension 5289

LB/as