

**Memorandum to the City of Markham Committee of Adjustment**  
September 19, 2019

**File:** A/84/19  
**Address:** 5328 7 Hwy East, Markham  
**Applicant:** Dr. Frank Shahidi  
**Agent:** David Johnston Architect Ltd. (David Johnston)  
**Hearing Date:** Wednesday September 25, 2019

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

The applicant is requesting relief from the following Special Commercial One (SC1) zone requirements of By-law 1229, as amended, as they relate to a proposed Commercial School in an existing multi-unit commercial building, to permit:

- a) **Amending By-law 326-82, Section 1.2 (b):**  
a Commercial School, whereas the By-law does not permit a Commercial School;  
and
- b) **Amending By-law 326-82, Section 1.2 (c)(vii)(b):**  
Zero (0) loading docks and loading spaces whereas the By-law requires two (2) loading spaces.

**BACKGROUND**

**Property Description**

The 0.77 ha (1.90 ac) subject property is located on the north side of Highway 7 East, and is east of McCowan Road. The subject property contains a one-storey 2,421.80 m<sup>2</sup> (26,068.03 ft<sup>2</sup>) multi-tenant commercial building containing six units. Current tenants within the existing building include three restaurants, a fitness studio and a paint store. There is one vacant unit at the rear of the building (Unit 1C), which is proposed to be used a Commercial School (See Site Plan, Appendix 'A').

There is an existing one-storey multi-unit commercial building to the west of the property and an auto dealership located to the east. Existing multi-tenant commercial and industrial buildings are located to the north and a low rise subdivision is located to the south, across Highway 7 East. The subject site and the adjoining property to the west share a driveway access from Highway 7 East, and the parking configuration for the site and this abutting property allow for unencumbered access.

**Proposal**

The applicant is requesting a variance to permit a Commercial School with a floor area of 245 m<sup>2</sup> (2,637.16 ft<sup>2</sup>) as an additional permitted use within Unit 1C of the existing building. The applicant is also requesting a variance to permit zero (0) loading spaces on the property. No external changes to the subject property are proposed.

### **Official Plan and Zoning**

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

The 2014 Official Plan identifies the subject lands as within the Markville Key Development Area, which "is to provide for a mixed-use key development area comprising employment and residential development in single use and mixed use settings, providing for office, retail, service, entertainment and recreational uses, and a variety of higher density housing types". A new Secondary Plan is required for the Markville Key Development Area, and until this Secondary Plan is approved, the policies of the 1987 Markham Official Plan remain applicable.

### Official Plan 1987

The 1987 Official Plan designates the subject property as 'Commercial' and 'Major Commercial Area' which provides for retail uses, service uses, offices, banks and financial institutions, hotels and motels, sports, health and fitness recreational uses, entertainment uses, institutional uses, day care centres, private and commercial schools, restaurants and trade and convention centres. The proposed commercial school is provided for in the 1987 Official Plan.

### Zoning By-Law 1229

The subject property is zoned 'Special Commercial One' (SC1) under By-law 1229, as amended, which permits a number of commercial uses including animal hospital or veterinary establishment, art or antique sales, bakeries, banks or financial institutions, bowling lanes, Brewer's Retail stores, catalogue sales stores, clubs – fraternal or commercial, furniture/carpet/or appliances sales and repair, health centres, home improve stores, ice cream parlours, liquor and wine stores, personal service shops, pet stores, photography studios, photography service, professional or business offices, restaurants, book stores, camera stores, sporting good stores and, stationary stores. The By-law does not permit a Commercial School on the subject property, which is defined as "a premises used as a school conducted for gain including a studio of a dancing teacher or a music teacher, an art school, golf school, school for calisthenics, business or trade school and any other such specialized school". Accordingly the applicant has submitted a variance to request this as an additional use on the subject property.

The 2,421.80 m<sup>2</sup> (26,068.03 ft<sup>2</sup>) subject building also requires two off-street loading spaces, which are required for buildings with a gross floor area greater than 1,860 m<sup>2</sup> (20,021 ft<sup>2</sup>). The applicant is requesting a variance to permit that no loading spaces be required for the existing building.

A minor variance was approved in 2013 (A/76/13) to permit the expansion of an existing restaurant and to permit reduced onsite parking requirements related to the restaurant expansion (See Appendix 'C').

### **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; and
- d) The general intent and purpose of the Official Plan must be maintained.

### **Commercial School Use**

The applicant has submitted a variance to permit a Commercial School within the existing building on the subject property, whereas a Commercial School is not listed as a permitted use in SC1 zone of By-law 1229, as amended. The commercial school is proposed at the rear of the existing one-storey commercial building in Unit 1C (See Appendix 'A') and will occupy approximately 245 m<sup>2</sup> (2,637.16 ft<sup>2</sup>) of the total building area.

The 1987 Official Plan provides for commercial schools on the subject property. Although the applicable zoning by-law does not specifically permit Commercial Schools, it does permit a diverse range of commercial uses on the subject lands and staff are satisfied that requested variance maintains the intent of the zoning by-law. For the purpose of calculating required onsite parking, the existing multi-unit building is considered a shopping centre. This would include a commercial school without requiring additional parking, providing it is not increasing the overall size of the building. Since the proposed use is within the exiting building, staff do not anticipate any parking impact from this proposed use.

Given that the proposed commercial use meets the purpose and intent of the 1987 and 2014 Official Plan, meets the purpose and intent of the applicable zoning By-law, and will not require additional required parking, it is Staff's opinion that the variance request is minor in nature and will not result in impacts to the existing building and uses.

### **Loading Dock Reduction**

The applicant is requesting a variance to permit zero (0) loading spaces whereas the by-law requires two (2) loading spaces for buildings with a gross floor area greater than 1,860 m<sup>2</sup> (20,021 ft<sup>2</sup>). The By-law also stipulates the minimize size of loading spaces, and the two loading spaces require a minimum length of 12 m (40 ft). This is to accommodate deliveries from large delivery vehicles as opposed to smaller trucks or cube vans. The existing makeup of the one-storey multi-tenant building includes six units, three of which are restaurants, a paint store, a fitness centre and the vacant subject unit. Given the makeup of the existing building, and in consideration of other permitted uses, Staff are of the opinion that the removal of the requirement for large loading spaces will not result in a significant impact to the site or abutting properties.

**PUBLIC INPUT SUMMARY**

No written submissions were received as of September 17<sup>th</sup>, 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 variances meet the four tests of the Planning Act. 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 "B" for conditions to be attached to any approval of this application.

PREPARED BY:



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Aqsa Malik, Planner, East District

REVIEWED BY:



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Stephen Cori, Senior Planner, East District

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**APPENDIX "B"**

**CONDITIONS TO BE ATTACHED TO ANY APPROVAL OF FILE A/84/19**

1. The variances apply only to the proposed development as long as it remains;
2. That the variances apply only to the subject development, in substantial conformity with the plan(s) attached as 'Appendix A' to this Staff Report and received by the City of Markham on August 28, 2019 and that the Secretary-Treasurer receive written confirmation from the Director of Planning and Urban Design or designate that this condition has been fulfilled to his or her satisfaction.

CONDITIONS PREPARED BY:



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Aqsa Malik, Planner, East District



## COMMITTEE OF ADJUSTMENT

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 NOTICE OF DECISION
 

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I hereby certify that the attached is a true copy of the decision of the Committee of Adjustment in the matter of Application No. A/76/13 was **approved** at a hearing held on June 19, 2013. A written appeal of this decision must be received **no later than Tuesday July 9, 2013. After this date the decision becomes final and binding and cannot be appealed.**

Appeals to the Ontario Municipal Board must be served personally or sent by registered mail to the Secretary Treasurer, Committee of Adjustment, accompanied by a cheque in the amount of **\$125.00**, payable to **the Minister of Finance**, and must give reasons for the appeal. When filing an appeal to the Ontario Municipal Board, please note there will be an additional City of Markham administration fee of \$200.00, plus \$26.00 HST (a separate cheque made payable to City of Markham in the amount of **\$226.00**) must be made at the time of the appeal submission to the Committee of Adjustment. **The reasons must be given or it will not be considered an objection. A letter of objection filed prior to the hearing date is not a notice of appeal.**

Only individuals, corporations and public bodies may appeal decisions in respect to variance or consent applications to the Ontario Municipal Board. A notice of appeal may not be filed by an unincorporated association or group. However, a notice of appeal may be filed in the name of an individual who is a member of the association or group on its behalf.

Sworn before me at the City of Markham

June 20, 2013

\_\_\_\_\_  
A Commissioner, etc.

Nathalie Yvette Orsi, a Commissioner, etc.,  
Province of Ontario, for  
The Corporation of the City of Markham.  
Expires July 21, 2013.

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Andrew Hordylan, MUDs, BaT.  
Secretary Treasurer,  
Committee of Adjustment,  
City of Markham.




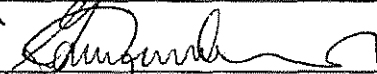


COMMITTEE OF ADJUSTMENT RESOLUTION

Application: A/76/13  
Hearing Date: June 19, 2013  
Name: Frank Shahidi  
1113899 Ontario Inc.  
Location: 5328 7 Hwy., Markham  
PL 3965 LT 8 9 ROW 65R7143 PTS 2 4

**Last Date of Appeal: Tuesday July 9, 2013**

Moved by <sup>PF</sup> 

Seconded by <sup>GM</sup> 

THAT Application No. A/76/13, submitted by Frank Shahidi, 1113899 Ontario Inc. owner of 5328 7 Hwy., Markham, PL 3965 LT 8 9 ROW 65R7143 PTS 2 4, requesting relief from the requirements of By-law No. 1229, as amended, to permit an expansion of restaurant space to a total of 1,315 square metres of leasable floor area of an existing shopping centre at a parking rate of 1 parking space per 13 square metres of leasable floor area for that portion which occupies more than 20 percent of the total leasable floor area of a shopping centre, whereas the by-law requires a parking rate of 1 parking space per 9 square metres of leasable floor area for that portion which occupies more than 20 percent of the total leasable floor area of a shopping centre, be **approved** for the following reasons:

- (a) in the opinion of the Committee, the general intent and purpose of the by-law will be maintained;
- (b) in the opinion of the Committee, the general intent and purpose of the Official Plan will be maintained;
- (c) in the opinion of the Committee, the granting of the variance is desirable for the appropriate development of the lot;
- (d) in the opinion of the Committee, the requested variance is minor in nature.



COMMITTEE OF ADJUSTMENT RESOLUTION

*Application: A/76/13*

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SUBJECT to the following condition:

- 1) That a bicycle storage rack is provided on site to the satisfaction of the Director of Planning & Urban Design, or his designate.

Resolution carried.

**SPECIAL NOTE TO OWNERS AND AGENTS:** It is the responsibility of the owner and/or agent to ensure that all conditions of approval are met through the respective departments noted therein. Failure to do so may result in additional approvals being required.