



## Report Committee of Adjustment

**Filing Date:** November 17, 2023

**Hearing Date:** December 19, 2023

**File:** A-2023-0368

**Owner/  
Applicant:** PD Commercial Lakelands Inc  
Glen Schnarr and Associates Inc (Patrick Pearson)

**Address:** 885 Bovaird Drive E

**Ward:** 1

**Contact:** Megan Fernandes, Assistant Development Planner

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### **Recommendations:**

That application A-2023-0368 is supportable, subject to the following conditions being imposed:

1. That the extent of the variances be limited to that shown on the sketch attached to the Notice of Decision;
  2. That the owner finalize site plan approval under City File SPA-2023-0084, execute a site plan agreement, and post any required financial securities and insurance to the satisfaction of the Director of Development Services;
  3. That failure to comply with and maintain the conditions of the Committee shall render the approval null and void.
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### **Background:**

The subject property has functioned as a sales office for approximately 20 years. The owner is now proposing to redevelop the site for a multi-unit, multi-building commercial plaza which is associated with an ongoing Site Plan application (SPA-2023-0084). The applicant has submitted a Minor Variance application to facilitate the proposed commercial development by requesting twelve (12) variances. The variances relate to uses, setbacks and landscape open space strip reductions, building height, and parking space reductions.

### Existing Zoning:

The property is zoned 'Commercial 1 – Special Section 1190 (C1-1190)', according to By-law 270-2004, as amended.

Requested Variances:

The applicant is requesting the following variances:

1. To permit a day nursery, whereas the by-law does not permit the use;
2. To permit a front yard setback of 1.5 metres to a proposed commercial building, whereas the by-law requires a minimum 4.5 metre front yard depth of 4.5 metre, measured from the westerly property line;
3. To permit an exterior side yard setback of 3.0 metre (at Bovaird Dr.) to a proposed commercial building, whereas the by-law requires a minimum 4.5 metre exterior side yard setback;
4. To permit an exterior side yard setback of 1.5 metre (at Sea Lion Rd.) to a proposed commercial building, whereas the by-law requires a minimum 4.5 metre exterior side yard setback;
5. To permit a landscape open space strip of 3.0 metre along the northerly property lines, whereas the by-law requires a minimum of 4.5 metre be provided along the northerly and westerly property lines;
6. To permit a landscape open space strip of 1.5 metre along the westerly property lines, Whereas the by-law requires a minimum of 4.5 metre be provided along the northerly and westerly property lines;
7. To permit a landscape open space strip of 1.5 metre along the southerly property lines, whereas the by-law requires a minimum of 6.0 metre be provided along the southerly and easterly property lines;
8. To permit a landscape open space strip of 3.0 metres along the easterly property lines, whereas the by-law requires a minimum of 6.0 metres be provided along the southerly and easterly property lines;
9. To permit a retaining wall within a landscaped open space, whereas the by-law does not permit retaining walls within a landscaped open space;
10. To permit a commercial building having a maximum building height of 3 storeys, whereas the by-law permits a maximum building height of 2 storeys;
11. To permit a setback to 1.5 metre to a utility structure, whereas the by-law requires the yard regulations required for the zone be complied with; and
12. To permit a minimum of 73 parking spaces, whereas the by-law requires a minimum of 82 parking spaces.

## **Current Situation:**

### **1. Maintains the General Intent and Purpose of the Official Plan**

The subject property is designated as 'Residential' in the Official Plan and 'Convenience Retail' in the Flowertown Secondary Plan (Area 6).

The 'Residential' policies of the Official Plan permits complimentary uses which may include Commercial and Institutional and Public Uses designations of this plan, such as schools, libraries, parks, community and recreation centres, health centres, day care centres, local retail centre, neighbourhood retail, convenience retail, or highway and service commercial uses. Quasi-institutional uses including social service agencies, union halls, as well as fire halls, police stations and utility installations may also be permitted in the Residential designations of this Plan (4.2.1.1).

The Convenience Retail designation permits a range of uses and be developed in accordance with the Local Retail policies of Section 4.3.5 of the Official Plan. Convenience Retail sites are usually located in residential areas in order to serve the shopping needs of the community. As stated in section 4.3.5.4, Permitted uses typically include small scale retail stores, supermarkets or specialty stores, junior department stores, pharmacies, restaurants and service establishments that primarily serve the surrounding residential area.

The proposed development contemplates the addition of three (3) commercial buildings which will include associated parking, loading, and landscaped areas. The buildings are intended to be used for a variety of uses, including a restaurant, medical office, sales offices and a day nursery. A related Site Plan Application (SPA-2023-0084) is currently under review. The requested variances are considered to align with the context of the policies of the Official Plan and Secondary Plan, and maintains the general intent and purpose of the Official Plan.

### **2. Maintains the General Intent and Purpose of the Zoning By-law**

The property is zoned 'Commercial 1 – Special Section 1190 (C1-1190)', according to By-law 270-2004, as amended.

#### *Variance 1 (Day Nursery)*

Variance 1 is requested to permit a day nursery, whereas the by-law does not permit the use. The intent of the by-law in providing the list of permitted uses is to ensure compatibility with other uses permitted on a site.

While the proposed day nursery is not specifically permitted, the intent of the zone is to accommodate uses which serve the commercial convenience needs of the nearby residential neighbourhoods. The proposed day nursery use is compatible with the other proposed uses in the plaza and the use will serve nearby residential properties. The proposed day nursery is intended to be located within Building "B" with an outdoor play area located on the rooftop. The uses provided in "C1-1190" provide supporting services to the residential community and those passing in the area. Subject to the recommend conditions of approval, the variance maintains the general intent and purpose of the Zoning By-law.

### *Building Setback Variances (2, 3 and 4)*

Variance 2 is requested to permit a front yard setback of 1.5 metres to a proposed commercial building, whereas the by-law requires a minimum 4.5 metre front yard depth of 4.5 metre, measured from the westerly property line.

Variance 3 is requested to permit an exterior side yard setback of 3.0 metre (at Bovaird Dr.) to a proposed commercial building, whereas the by-law requires a minimum 4.5 metre exterior side yard setback.

Variance 4 is requested to permit an exterior side yard setback of 1.5 metre (at Sea Lion Rd.) to a proposed commercial building, whereas the by-law requires a minimum 4.5 metre exterior side yard setback.

In relation to variances 2, 3 and 4, the intent of maximum and minimum building setbacks from a Road and to a property line is to ensure that the building is appropriately and uniformly positioned on the property to control the massing of the building in a manner that does not limit the functioning of the use on-site.

In this case, the applicant's proposed site plan has demonstrated that the proposed building encroachments, beyond the requirements of the zoning by-law, will not impede the site visibility lines at the street corner and will not create negative impacts from a streetscape design perspective. The minor variance is related to an ongoing Site Plan Approval application (SPA-2023-0084) to facilitate the development of three (3) commercial buildings which are intended to be used for a variety of commercial uses. The setbacks are intended to bring the buildings closer to the lot lines and reinforce the street edge along Bovaird Dr. Furthermore, the reduced variances do not seek to reduce the setback to the abutting residential land uses located to the east.

### *Landscape Open Space (Variances 5, 6, 7, 8 and 9)*

Variance 5 is requested to permit a landscape open space strip of 3.0 metre along the northerly property lines, whereas the by-law requires a minimum of 4.5 metre be provided along the northerly and westerly property lines.

Variance 6 is requested to permit a landscape open space strip of 1.5 metre along the westerly property lines, whereas the by-law requires a minimum of 4.5 metre be provided along the northerly and westerly property lines.

Variance 7 is requested to permit a landscape open space strip of 1.5 metre along the southerly property lines, whereas the by-law requires a minimum of 6.0 metre be provided along the southerly and easterly property lines.

Variance 8 is requested to permit a landscape open space strip of 3.0 metres along the easterly property lines, whereas the by-law requires a minimum of 6.0 metres be provided along the southerly and easterly property lines.

In regard to variances 5 to 9, the intent in requiring a minimum open space landscape width along all property lines, except at approved access locations, is to aid in creating a positive visual impact for the property and avoiding creating a sea of concrete. The proposal contemplates reductions of 1.5m along the northern property lines, 3.5m along the westerly property lines, 4.5m along the southerly and easterly property lines. Given the context of the proposed development, the reduced landscape widths apply to limited locations on site. Landscape plans have been submitted in support of the related Site Plan Application ensuring that adequate landscaping is provided on the lands to contribute to an aesthetically pleasing streetscape.

#### **Retaining Wall (Variance 9)**

Variance 9 is requested to permit a retaining wall within a landscaped open space, whereas the by-law does not permit retaining walls within a landscaped open space. The intent of the by-law in limiting retaining walls to be located within the required minimum landscape open space area is to ensure that a consistent and aesthetically pleasing streetscape is maintained and that sufficient landscaped open space is provided on the property.

The applicant is proposing to construct a retaining wall along Building A fronting on Bovaird Drive. In this instance the proposed retaining wall will not be visible from Bovaird drive and will be level with the grade along Bovaird Dr. the retaining wall is required to manage a 4.5m grade differential across the site, Bovaird Drive, the east corner of the site and the high point of the site. The proposed retaining wall will have a minimal visual impact on the streetscape as a decorative metal fence is proposed on top of the retaining wall which will contribute to the visual aesthetics and will be also be reviewed in the site plan process by various City staff. The proposed retaining wall will not hinder the ability of the applicant to provide high quality landscaping within the minimum required landscape open space area along the property line. The variance maintains the general intent and purpose of the Zoning By-law.

#### ***Building Height (Variance 10)***

Variance 10 is requested to permit a commercial building having a maximum building height of 3 storeys, whereas the by-law permits a maximum building height of 2 storeys. The intent of the by-law in regulating the maximum building height is to ensure that the construction of the commercial building is appropriate for the surrounding neighbourhood. The requested single storey increase is not anticipated to significantly impact the character of the proposed commercial development. In this instance the proposed one storey height increase is will be applicable to one building within the commercial plaza (Building B). The additional height is attributable to a stairwell enclosure located on the rooftop of building B which is required to allow access to the rooftop play area associated with the day nursery use. Subject to the recommended conditions of approval, Variance 10 is considered to maintain the general intent of the Zoning By-law.

#### ***Utility Structure (Variance 11)***

Variance 11 is requested to permit a setback to 1.5 metre to a utility structure, whereas the by-law requires the yard regulations required for the zone be complied with. Setbacks to utility structures are in place to protect utilities from potential vehicular traffic, maintain site aesthetics and ensure there is

no interference with the functionality of the site. With regard to proper functionality of the site, setbacks to utility structures provide space to access utilities, maintain views from the street and provide separation distance from the associated building.

The utility structure is setback from public roadway. It is located at the rear of the site with limited frontage on Sea Lion Road. In the case of the subject property, the transformer is located in a way whereby it will be integrated into the proposed landscaping, minimizing its impacts on both the aesthetic and functional characteristics of the site. Subject to the recommended conditions of approval, Variance 10 is considered to maintain the general intent of the Zoning By-law.

### *Reduced Parking (Variance 12)*

Variance 12 is requested to permit a minimum of 73 parking spaces, whereas the by-law requires a minimum of 82 parking spaces. The intent of the by-law in regulating minimum parking requirements is to ensure that the site can properly accommodate the parking demand generated by the permitted uses on the property.

In relation to variance 12, the applicant has provided a Parking Memo prepared by BA Group dated November 7, 2023. The applicant is requesting a parking space reduction that is equivalent to an 11.61% decrease. This 9 space parking reduction is not anticipated to negatively impact the functioning of the site or generate parking overflow onto adjacent properties. The parking memo provides the justification for the reduction in parking is based on current standards and future parking levels. Further, the subject property is currently subject to a Site Plan Application (SPA-2023-0084) whereby Traffic staff have had opportunity to review and approve the parking configuration for the site. Subject to the recommended conditions of approval, the variance is considered to maintain the general intent and purpose of the zoning by-law.

### 3. Desirable for the Appropriate Development of the Land

The variances are requested to facilitate the future development of a commercial plaza related to an existing Site Plan Approval application (SPA-2023-0084).

Variance 1 is intended to permit a day nursery where the by-law does not permit the use. It is anticipated that the day nursery use will largely serve the residents within the existing neighbourhood and provide a needed services within this area of the City. Subject to the recommended conditions of approval, the requested variance is considered to be desirable for the appropriate development of the land.

Variances 2, 3, and 4 are intended to allow a reduced building setback to accommodate the proposed buildings sitting and site layout. Given the proposed layout of the site, no functional impact with respect to parking or the safe maneuvering of vehicles around the property will be impacted.

Variances 5, 6, 7, 8 and 9 are intended to reduce the width of landscape open space strip abutting streets and lot lines. Although decreased in landscape open space strip widths are requested, the development will provide a high quality streetscape and ensure safety is not impacted where reductions are located. Though the related Site Plan Approval application, the landscape treatment will be reviewed and implemented to offset the reductions requested within this minor variance application.

Variance 9 is also requested to permit the location a retaining wall in the required landscaped open space area located on the northeastern edge of Building A fronting Bovaird Drive. The variance is not anticipated to negatively impact the streetscape. Currently, the project is subject to site plan control, and a condition of approval is recommended that the owner finalize site plan approval under City File SPA-2023-0084 and post any required financial securities and insurance to the satisfaction of the Director of Development Services. The Minor Variance and related Site Plan application has been reviewed by Open Space Development staff and no concerns are noted. Sufficient landscaping treatment will be provided through the review of the related site plan application. Subject to the recommended conditions of approval, the variance is considered desirable for the appropriate development of the land.

Variance 12 is to allow an associated reduction in required parking for the plaza, from the required 82 spaces to the proposed 73 spaces. The proposed 73 parking spaces are adequate to fulfill the parking demands of the commercial plaza, including the proposed day nursery. The request is minor and not anticipated to negatively impact the function of the site or generate parking overflow onto the adjacent properties.

No negative impacts are anticipated resulting from the requested variances. It is noted that the owner will have to finalized Site Plan Approval under City File SPA-2023-0084, execute a site plan agreement, and post any required financial securities and insurance to the satisfaction of the Director of Development Services. Subject to the recommended conditions, the proposed variance is desirable for the appropriate development of the land.

#### 4. Minor in Nature

The variances are requested to facilitate the development of the lands for a commercial retail plaza comprising three buildings. Subject to the recommended conditions of approval, the variance is minor in nature. Building setback and landscape reductions are requested fostering a pedestrian friendly community node while addressing the grade changes between Bovaird Drive East and Sea Lion Drive. The proposed retaining wall is not anticipated to negatively impact the functionality or aesthetic qualities of the site or adjacent properties. Subject to the recommended conditions of approval, the variances are considered minor in nature.

Respectfully Submitted,

Megan Fernandes

Megan Fernandes, Assistant Development Planner