

Original Filing Date: December 5, 2017
Amended Filing Date: December 14, 2020
Hearing Date: March 30, 2021

File: A18-011

**Owner/
Applicant:** THE GORE PLAZA INCORPORATED

Address: '0' Nexus Avenue (at Ebenezer Road)

Ward: 10

Contact: Dana Jenkins, Development Planner

Recommendation:

That application A18-011 is not supportable.

Background:

The subject site is part of a larger development which has been the subject of many Committee of Adjustment applications over the years, including:

2003: Approval for a religious institution and a retirement home with assisted living (File A351/03)

2005: Approval to permit a reduction in required parking (from 781 to 682 spaces) and to permit a maximum building height of nine (9) storeys for a Retirement Home (rather than the maximum two (2) storey height permitted under the zoning by-law (File A04-330) This approval was subject to the following condition: That the proposed residential building shall only be a Retirement Home as defined in the Zoning By-law.

2008: Approval for parking reductions from 682 spaces to 673 spaces (Files A08-021 and A08-031)

2008: Approval to allow a building height of eleven (11) storeys rather than nine (9) for a 'retirement residence' (File A08-111)

2017: Application filed to permit a residential apartment building oriented to seniors where the zoning by-law does not permit the proposed use; and to permit zero parking

spaces associated with the proposed 400 square metres of ground floor commercial floor area of the apartment building, where the by-law required 22 parking spaces for the commercial component. Subsequent to internal circulation of the application, the applicant was advised that the development could not be reviewed and supported through the minor variance process. The applicant deferred the application and no Public Notice was issued at the time.

2020: Applicant sought to re-activate the application to permit a five-storey building with two lower levels of commercial uses and three upper floors of residential apartments with 19 units. City staff advised that the proposed mixed-use project is not appropriately processed via Committee of Adjustment but rather via amendment of the Official Plan and the Zoning By-law.

2021: Pre-consultation Application submitted (PRE-2021-0004) for the proposed development. Although the applicant's intent was for pre-consultation on the requested minor variances, the application was circulated to department and outside agencies per standard process. Consolidated comments and complete checklist of required studies and plans for formal submission for the required Official Plan and Zoning By-law amendments were provided to the applicant.

Since that time, the applicant has advised of the intent to proceed with the application to a Committee of Adjustment Hearing.

Existing Zoning:

The property is zoned "Industrial Four – Section 2568 (M4-2568)", according to By-law 270-2004, as amended.

Requested:

The applicant is requesting the following:

1. To permit a building setback of 3 metres to Nexus Road whereas the By-law requires a minimum building setback of 6 metres to Nexus Road;
2. To permit 127 parking spaces whereas the by-law requires a minimum 144 parking spaces;
3. To permit a residential apartment dwelling (oriented to seniors) whereas the site specific zone does not permit the proposed use, but where previous conditional approvals by the Committee of Adjustment permit "a retirement home" (A04-330) and make reference to "a retirement residence" (A08-011 and A08-021) which, in the opinion of the applicant is a similar use generally defined by the by-law.

Current Situation:

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

The property is designated 'Business Corridor' in the Official Plan. The employment objectives listed within the Official Plan outline the need to protect for the supply of designated employment areas, and the need to increase the proportion of the City's non-residential assessment base by facilitating and promoting development activity in these areas. To implement these employment objectives, in part, Section 4.4.1 of the Official Plan indicates that lands within the 'Business Corridor' designation are intended to permit a broad range of employment and employment-related uses, and that these employment areas shall also allow for some ancillary related uses, provided that these ancillary uses did not negatively impact the viability of the employment lands. The development of supportive housing facilities and other noise sensitive public and institutional uses, such as day care centres, schools, nursing homes and hospitals will be permitted (except within the limits of the Lester B. Pearson International Airport Operating Area). There are no residential land use permissions listed or contemplated within any of the 'Business Corridor' designation policies.

A supportive housing facility and a retirement home generally refers to a place for accommodation of persons, who by reason of their emotional, mental, social or physical condition, or legal status require a supervised living arrangement for their well-being. As such, these are not identified as residential uses but rather are considered to be small scale institutional type uses and for this reason are permitted to be located within the 'Institutional' and 'Employment' designations.

As indicated by Section 4.4.1.8 (listed below), a municipal comprehensive review (MCR) process is required to be undertaken and in accordance with specified evaluation criteria. This process will also involve a formal Official Plan Amendment application being filed for both the Official Plan and the Secondary Plan. The policy clearly indicates that a residential use is considered to be a non-employment use.

4.4.1.8 An Official Plan Amendment, including an amendment to a Secondary Plan, to permit a non-employment use on lands designated Business Corridor, shall or be considered based on a municipal comprehensive review, which shall demonstrate that:

- i) There is a need for the conversion;
- ii) The City will meet the employment forecasts set out in Section 2 of this Plan;
- iii) The conversion will not adversely affect the overall viability of the employment area, and achievement of the intensification target, density targets and other policies of this Official Plan;
- iv) There is existing or planned infrastructure to accommodate the proposed conversion;
- v) The lands are not required over the long term for the employment purposes for which they are designated; and,

vi) Cross-jurisdictional issues have been considered.

For the purposes of this policy, non-employment uses include, but are not limited to: residential, retail in excess of 1,000 square metres (individual store or cluster of stores) and non-ancillary uses.

Section 4.4.1.2 of the Official Plan states that the 'Business Corridor' designation will be broken down through further land use sub-designations and through the preparation of the Secondary Plan policies and that these policies will set out the appropriate requirements and restrictions to implement development within these areas.

Within the Bram East Secondary Plan (Area 41), the property is designated 'Mixed Commercial/ Industrial' and 'Special Policy Area 16' (SPA 16). The 'Mixed Commercial/ Industrial' designation allows for motels, restaurants, retail warehousing, automotive sales, service and repair facilities, specialty food and grocery stores, prestige industrial, uses, with or without ancillary retail, office, or service functions, warehousing operations, parks, open space, and community service uses.

Lands subject to the 'Mixed Commercial/ Industrial' designation were originally intended to be developed primarily for space extensive industrial and warehousing operations, while also providing some limited opportunity for ancillary office, and small scale retail and service commercial type uses. These service commercial uses did not include personal service uses as these were intended to locate within the 'Neighbourhood Retail' and the 'Convenience Retail' designations.

The lands bound by Ebenezer Road, Nexus Avenue, Fogal Road and The Gore Road are also subject to 'Special Policy Area 16' which allows for an expanded range of non-industrial type uses (such as a school, day care, animal hospital, place of worship, food store, office, retail and personal service uses). The City initiated the preparation and processing of SPA 16 to recognize the existing land uses that had moved into the area in order to serve the surrounding population base and business community.

It is noted that there are no permissions for residential uses within either of these secondary plan designations (the 'Mixed Commercial/ Industrial' and the 'Special Policy Area 16'). The requests to reduce the required building setback as well as the required parking for the proposed development are not considered to maintain the general purpose and intent of the Official Plan, which does permit residential uses under the policies of the Official Plan or the Secondary Plan. The requested variances to permit a reduced building setback; to reduce the required parking; and to consider a residential apartment building oriented to seniors use as comparable to a retirement home use approved by conditional minor variance are not considered to maintain the general purpose and intent of the Official Plan.

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

The property is zoned 'Industrial Four – Section 2568 (M4-2568)', according to By-law 270-2004, as amended. Permitted uses of the zone include both industrial and non-

industrial uses, as follows:

2568.1 Shall only be used for the following purposes:

(a) Industrial, which for the purpose of this section, shall only include the following uses:

- (1) The manufacturing, cleaning, packaging, processing, repairing or assembly of goods, foods or materials within an enclosed building, but excluding a motor vehicle repair shop and a motor vehicle body shop as a principal or accessory use;
- (2) A warehouse;
- (3) A utility installation; and,
- (4) A printing establishment.

(b) Non-Industrial, which for the purpose of this section, shall only include the following uses:

- (1) A retail establishment;
- (2) A retail warehouse;
- (3) A grocery store;
- (4) A personal service shop;
- (5) A dry cleaning and laundry distribution station;
- (6) A laundromat;
- (7) A bank, trust company, and finance company;
- (8) A health or fitness centre;
- (9) A custom workshop;
- (10) An animal hospital;
- (11) A place of commercial recreation;
- (12) A commercial, technical and recreational school;
- (13) A dining room restaurant, and a take-out restaurant;
- (14) A hotel or motel;
- (15) A service shop;
- (16) A banquet hall;
- (17) A community club;
- (18) An office;
- (19) A day care centre;
- (20) A supermarket;
- (21) A private school;
- (22) A recreation facility or structure; and,
- (23) A place of worship.

(c) Accessory Non-Industrial Uses, which for the purpose of this section, shall only include the following uses;

- (1) A garden centre sales establishment associated with a grocery store or retail warehouse; and,
- (2) Purposes accessory to the other permitted purpose.

The site-specific zone for these lands also specifies a minimum building setback of 6.0

metres along all lot lines abutting The Gore Road, Fogal Road, Ebenezer Road and Nexus Avenue.

A minimum of 650 parking spaces are to be provided, although that number applies to the total number of spaces for all lands within the same zone and not just this lot. The reduction proposed for this portion of the development is from 144 to 127 parking spaces.

The applicant makes three requests for relief from the requirements and restrictions of the Zoning By-law. The first of these is to approve a reduced building setback for the proposed mixed use building. The intent of regulating building setbacks is to provide consistency in streetscape and to ensure adequate area for landscaping and vegetation. In this instance, the applicant seeks to reduce the minimum building setback from the required 6 metre minimum to a 3 metres minimum setback.

The second requested variance made by the applicant is to further reduce the minimum parking requirements for the site, from 144 spaces to 127 spaces. The intent of regulating minimum parking requirements is to ensure that the demand generated by the proposed uses can be accommodated on-site and not create any off-site parking concerns. In this instance there has not been sufficient information submitted by the applicant to determine if further reduction in the required parking is supportable. A parking analysis will need to be provided in support of the proposed parking reduction. Until such time as this technical submission is provided for review, the appropriateness of the requested parking variance cannot be evaluated.

The final relief sought by the applicant is to permit a residential apartment building oriented to seniors where the site-specific zone does not permit the proposed use, but where previous conditional approvals by the Committee of Adjustment permit "a retirement home" (A04-330) and make reference to "a retirement residence" (A08-011 and A08-021) which, in the opinion of the applicant is a similar use generally defined by the by-law.

The applicant's agent has opined that this determination is within the powers of the Committee based on Section 45 (2)(b) of the *Planning Act*, which reads as follows:

'Where the uses of land, buildings or structures permitted in the by-law are defined in general terms, may permit the use of any land, building or structure for any purpose that, in the opinion of the committee, conforms with the uses permitted in the by-law.'

In reviewing the uses permitted under the zoning by-law (listed above on page 5), there are no uses which are residential in nature. In reviewing historic Committee decisions, staff acknowledge that there have been approvals for a narrowly defined "retirement home" and then later references to a "retirement residence". The proposed 'apartments oriented to seniors' (as described by the applicant's agent) does not comply with the very specific definition for a 'retirement home' (which are regulated by the Retirement Home

Regulatory Authority (RHRA));

For reference, the Zoning By-law definition for the term “retirement home” is provided below. Staff note that Section 45(2)(b) of the Planning Act anticipates that, where uses are “defined in general terms”, the Committee may render approval for a use that, in the opinion of the Committee, conforms with the uses permitted by the by-law. In this case, the use for which comparative approval is being sought is not, in fact, permitted by the By-law, rather “a retirement home” is a use previously approved by variance on the condition that “the proposed residential building shall only be a Retirement Home as defined in the Zoning By-law.”

Definition from Section 5 of By-law 270-2004 as amended

RETIREMENT HOME shall mean a residential care facility for the accommodation of persons, who, by reason of their emotional, mental, social, or physical condition, or legal status, require a supervised living arrangement for their well-being, in which:

- (a) dwelling units, rooms or room and board are supplied for hire or gain;
- (b) more than eight (8) persons in addition to the staff and operator are accommodated in the retirement home;
- (c) there is a common dining room and common sitting room for the residents,

but shall not include:

- (a) a group home;
- (b) an auxiliary group home;
- (c) a nursing home;
- (d) a supportive housing facility;
- (e) a lodging house.

The proposed residential apartment building oriented to seniors is not considered to conform to any of the industrial, commercial or institutional uses permitted by the applicable M4-2568 zone, nor is it considered to comply with the specifically defined term for Retirement Home for which conditional approval was granted by the Committee of Adjustment.

The requests to reduce building setback; to reduce the minimum required parking; and to make the determination that a residential apartment building conforms to the other permitted uses of the zone do not maintain the general purpose and intent of the Zoning By-law.

3. Desirable for the Appropriate Development of the Land

From a land use planning perspective, there may be merit in considering a mixed use residential apartment building on the property given the proximity to transit, commercial, social and cultural uses, provided that employment targets for the area can still be met. The appropriateness as to whether or not the apartment building should be placed on this

site, however, will need to be determined by a fulsome review of all required studies and reports associated with an Official Plan and Zoning By-law Amendment.

The Urban Design Brief will provide an opportunity to assess the proposed changes in height, design and gross floor area from the Retirement Home to a residential apartment building with lower level commercial. A parking analysis will provide the chance to evaluate if the proposed parking will meet the needs generated by the proposed uses.

Until the required studies and reports are undertaken and submitted for review as part of an application to amend the Official Plan and Zoning By-law, the proposed changes in use and relief to building setbacks and parking requirements are not considered to be desirable for the appropriate development of the land.

4. Minor in Nature

The submissions provided to date in support of the requested variances are not sufficient to properly evaluate the proposed residential and commercial uses or the requested reductions in parking and building setback. The request to allow residential permissions on the property goes well beyond the Official Plan and Zoning By-law permissions in place for the lands. The requested building setback reduction, minimum parking reduction, and proposed residential use are not considered to be minor. Implementation of the proposed project should be undertaken through amendment of the Official Plan and the Zoning By-law, and not by way of minor variances.

The requested variances are not considered to be minor in nature.

Respectfully Submitted,

Dana Jenkins

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