

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: February 07, 2019

CASE NO(S): PL180737

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	The Erindale Academy
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	1576 Dundas Street West
Municipality:	City of Mississauga
Municipal File No.:	A006/18
OMB Case No.:	PL180737
OMB File No.:	PL180737
OMB Case Name:	2539088 Ontario Inc. v. Mississauga (City)

Heard: December 5, 6 and 7, 2018 in Mississauga ,
Ontario

APPEARANCES:

Parties

Counsel

2539088 Ontario Inc. o/a The Erindale
Academy

Adrian Frank

City of Mississauga

Raj Kehar

**DECISION DELIVERED BY THOMAS HODGINS AND ORDER OF THE
TRIBUNAL**

INTRODUCTION

Disposition

[1] After considering the evidence and submissions, the Tribunal dismisses the appeal and will not authorize the variances. Relevant matters from the hearing and the Tribunal's reasons are set out in this Decision and Order.

Background

[2] 2539088 Ontario Inc. operating as The Erindale Academy ("Appellant" or "TEA") runs a private school at 1576 and 1584 Dundas Street West ("Site") in Mississauga, Ontario and applied to the City of Mississauga ("City") Committee of Adjustment ("COA") for a number of variances intended to permit the expansion of the main school building.

[3] The variances were denied by the COA and resulted in this appeal.

[4] The City's Planning and Building Department advised the COA in a report dated July 17, 2018 that it "...has no objection to the application, subject to an amendment to permit four tandem parking spaces and 14 spaces on site, but the applicant may choose to defer the application in order to verify the accuracy of the requested variances." The staff report did not identify the four "classic" tests for the approval of a minor variance or whether or how these tests were satisfied.

Amended Application

[5] At the outset of the hearing, Adrian Frank requested that the original application be amended to reflect the variances set out in Attachment 1. These variances are intended to permit the proposal reflected in the Site Plan which appears as Attachment 2.

[6] The amended variance application differs from the original application in two key ways: Variance 3 is amended to require 14 parking spaces versus 11 parking spaces; and Variance 4 is added as a new variance.

[7] Mr. Frank submits that the requested amendment is minor pursuant to the *Planning Act* (“Act”) and does not require additional notice. Raj Kehar has no objection to this submission.

[8] The Tribunal found at the hearing that the requested amendment to the original application is minor, pursuant to s. 45(18.1.1) of the Act, and no further notice is required.

[9] Accordingly, the variances before the Tribunal at the hearing are as set out in Attachment 1.

Site, Context and Proposal

[10] The Site is located in the part of the City known as Erindale Village and has about 46 metres (“m”) of frontage on Dundas Street West, a lot depth of about 61 m and a lot area of about 2,800 square metres.

[11] As Attachment 2 shows, the Site is occupied by two existing buildings- a school administration building in the form of a two-storey house (which is listed in the City’s Heritage Inventory and known as the Taylor-Froebel House) fronting Dundas Street West on the west side of the Site; and an existing two-storey main school building (built in 1990) set back from the street on the east side of the Site. The Appellant proposes to expand the main school building with a three-storey addition running east-west across the rear of the Site. The addition includes classroom space, a multipurpose/lunchroom space and associated support facilities (including washrooms, kitchen, storage area and elevator). Parking is to be located in a parking lot on the Site adjacent to Dundas Street West (in front of the main school building), interior to the Site and on an adjacent church property on a shared basis.

[12] The Tribunal was advised during the hearing that 240 students would attend the expanded school and in closing that the Appellant is willing to accept a “cap” of 256 students. Neither of the Appellant’s consultant witnesses were able to advise the Tribunal of the number of staff (for instance, teachers, administrators, support staff, etc.) expected at the expanded school.

[13] Abutting the Site to the west and south are single detached dwellings. Abutting to the east is the Erindale Presbyterian Church (“EPC”), which has a heritage designation, and its associated parking. Across Dundas Street West to the north are lands and buildings zoned C4-7 (Mainstreet Commercial) in the City’s Zoning By-law (“ZBL”).

[14] In the City’s Official Plan (“OP”) the Site is designated Mixed Use, is on an Intensification Corridor and is within the Erindale Neighbourhood Character Area (“ENCA”) and, more specifically, within Site 1 of the ENCA. The Site is zoned C4-34 (Mainstreet Commercial) in the ZBL. The OP and ZBL permit a private school on the Site.

EVIDENCE AND SUBMISSIONS

Witnesses

[15] In support of the appeal, Mr. Frank on behalf of the Appellant called three witnesses:

- A. Martin Quarcoopome, a consultant who was qualified without challenge to provide independent expert opinion evidence in land use planning; Mr. Quarcoopome testified that the variances meet all of the relevant criteria and tests, represent good planning and should be approved;
- B. Robert Ruggiero, a City staff planner who appeared under summons and who was qualified without challenge to provided independent expert opinion evidence in land use planning; Mr. Ruggiero authored the above-noted staff

report to the COA; and

- C. Richard Pernicky, a consultant who was qualified without challenge to provide independent expert opinion evidence in transportation planning.

[16] In opposition to the appeal, Mr. Kehar called two witnesses on behalf of the City:

- A. Chris Sidlar, a consultant who was qualified without challenge to provide independent expert opinion evidence in transportation planning; and
- B. N. Edward (Ted) Davidson, a consultant who was qualified without challenge to provide independent expert opinion evidence in land use planning; Mr. Davidson recommends that the Tribunal dismiss the appeal as the variances do not meet the applicable criteria and tests and do not represent good planning.

Participants

[17] The Tribunal heard from nine Participants: David Macrae, Peter Langdon, Jane Phillips, Deryck Fox, Khiem Phan, David Lawton representing the Erindale Village Association, Terry Murphy, Greg Blackhurst and Brad Schneller.

[18] All of the Participants are opposed to the appeal and the approval of the variances. Collectively, their key concerns are:

- A. the Site is in the centre of Erindale Village and the design of the proposed building expansion does not protect, preserve and maintain the character of the Village in accordance with the OP and ZBL;
- B. the variances are not minor;
- C. there are other design options available and there is no circumstance which

- necessitates the requested variances and the situation is not so peculiar as to have to design the project in this way;
- D. the project and its design do not fit within the neighbourhood;
 - E. the parking to be provided is insufficient and the adjacent church cannot practically or reliably provide parking for the school given that its parking lot is already used by other businesses in the area and the church is used for events which require parking during days on which the school also operates;
 - F. it is incorrect to assume that students will not drive cars to the Site in the future and create an additional parking demand;
 - G. insufficient parking for the school will create a negative impact on the neighbourhood by encouraging or forcing school users to park illegally elsewhere perhaps on streets in the neighbourhood that do not permit parking;
 - H. snow storage on the Site will reduce the number of parking spaces available for use during winter months;
 - I. potential negative storm water impacts from the redeveloped Site;
 - J. the placement of the expansion on the Site, in conjunction with its height and massing, will negatively impact adjacent properties visually and will reduce their privacy, their quiet enjoyment and will create inappropriate overviews;
 - K. unacceptable lighting impacts from illuminated windows adjacent to the rear and side lot lines in the expanded building and other types of lighting overspill;
 - L. the loss of trees on the Site and the potential impact of any construction on

- the health of the trees on adjacent properties;
- M. the one existing vehicular access to the Site cannot adequately accommodate the additional traffic associated with a school expansion—it has a steep grade and road conditions on Dundas Street West do not allow left turn movements out of the Site without a significant delay;
 - N. the inappropriateness of the current vehicular access is evidenced by the fact that taxi and Uber drivers regularly drop off students on side streets in order to avoid going onto the Site;
 - O. Dundas Street West in the vicinity of the Site is extremely busy and the additional school traffic will add to this congestion and further inconvenience neighbourhood residents who currently have difficulty making left turns onto Dundas Street West from side streets;
 - P. the proposed use of tandem parking on the Site is impractical, the reduced parking aisle width is inappropriate and both of these variances reflect the proposed over development of the Site;
 - Q. the design lacks proper outdoor activity areas, proper pedestrian access and proper vehicular access and this compromises school life and safety;
 - R. the design may not be able to adequately accommodate emergency vehicle access to the Site;
 - S. the neighbourhood currently experiences litter from the students and this will increase with a bigger student body;
 - T. concern with the ownership status and stability of the retaining walls along certain portions of the Site's boundaries and the ability of these walls to withstand the proposed expansion;

- U. the expanded school will create a demand for additional student housing in the neighbourhood and the City's current by-laws do not adequately regulate such housing;
- V. studies have been done on the school expansion but not on the neighbourhood and how the proposed school expansion will impact the neighbourhood;
- W. the owners of the school have not been sufficiently forthcoming about the details and operation of the expanded school (hours of operation, number of students, number of staff, use of school facilities by third parties, any connection or affiliation with the local University of Toronto campus, etc.) and this has created suspicion and concern amongst neighbourhood residents; and
- X. a capacity of 240 students is too large for the Site as designed.

[19] Mr. Langdon summed up many of the Participants' sentiments when he advised that "This enterprise...contemplates squeezing too many students and other personnel onto a too small site..."

[20] Mr. Langdon also submitted a letter from Marija Marcinko who is opposed to the variances and who could not attend the hearing due to a serious illness.

Closing Submissions

[21] Messrs. Frank and Kehar provided their closing submissions in writing as the scheduled hearing time was taken up fully with evidence.

ANALYSIS AND FINDINGS

Legislative Framework

[22] In order for the appeal and the variances to succeed, the Tribunal must be satisfied, pursuant to s. 45(1) of the Act, that the variances: maintain the general intent and purpose of the OP; maintain the general intent and purpose of the ZBL; are desirable for the appropriate development or use of the land, building or structure; and are minor.

[23] In making its decision, the Tribunal must also, in accordance with the Act: have regard to matters of Provincial interest; ensure that the decision is consistent with the Provincial Policy Statement (“PPS”); and ensure that any decision conforms with, or does not conflict with, the applicable Provincial Plans. Based on the evidence, the only applicable Provincial Plan is the Growth Plan for the Greater Golden Horseshoe, 2017 (“Growth Plan”).

Categories of Variances

[24] For the purpose of analysis, the requested variances are placed in three categories: Variances 1, 2 and 6 involve the siting of features on the property (the “Siting Variances”); Variances 3 and 7 relate to the supply of parking (the “Parking Variances”); and Variances 4 and 5 involve tandem parking and the width of a parking aisle (the “Technical Variances”).

The Siting Variances

[25] The Siting Variances are as follows:

Variance 1: A front yard of 44.96 m (approx. 147.51 ft) measured to the proposed addition whereas By-law 0225-2007, as amended, permits a maximum front yard of 3.00 m (approx. 9.84 ft) in this instance;

Variance 2: 100% of the length of a streetwall set back beyond the maximum

front yard of 3.00 m (approx. 9.844 ft) whereas By-law 0225-2007, as amended, permits a maximum of 30% of the length of a street wall to be set back beyond the maximum front yard of 3.00 m (approx. 9.84 ft) in this instance; and

Variance 6: Parking to be provided between a streetwall and a lot line that is a street line whereas By-law 0225-2007, as amended, does not permit parking between a streetwall and a lot line that is a street line in this instance.

[26] The Siting Variances are intended to permit the school addition to be located at the rear of the Site and parking to be located in the front of the Site as a result of relief from zoning provisions which require a relatively “short” front yard setback (maximum of 3 m), that most of a streetwall be located within 3 m of the street line (a maximum of 30% of the length of a streetwall can be located beyond the maximum 3 m front yard) and which prohibit front yard parking (no parking between a streetwall and a lot line that is a street line).

[27] In the OP the Site is part of an area along Dundas Street West (referred to as Site 1 in the ENCA) that merits “special attention” and which is subject to Special Site Policies which include the following:

Policy 16.9.2.1.2

Notwithstanding the provisions of the Mixed Use designation, the following additional policies will apply:

b) any additions or alterations of existing buildings will be sensitive to the village theme of the area, and will be largely confined to the rear of the property; and

d) for those properties east of Mindemoya Road (which includes the school Site), on-site parking will consist only of surface parking and will be provided in the rear yard only.

[28] The word “will” in the OP denotes a mandatory requirement and the Special Site Policies for Site 1 in the ENCA apply to lands east and west of the school Site on both sides of Dundas Street West.

[29] As noted, the Site is zoned C4-34. The C4 Zone is a Commercial Zone called “Mainstreet Commercial.” The Part of the ZBL that introduces the Commercial Zones states:

The purpose of this Part is to provide a number of Commercial Zones, that allow for the development of various commercial businesses in different sized centres, areas and concentrations, in appropriate locations throughout the City as reflected in the C1, C2 and C3 zones. The C4 zone refers to Mainstreet areas which are pedestrian-oriented and street-related retail areas.

[30] The C4-34 Zone includes the types of regulations that one would expect in a Zone named Mainstreet Commercial (short maximum front yard setback, minimal side yards between like zoned buildings, minimum two-storey height, commercial entrances that address the street and parking and loading that are not located between a streetwall and a lot line that is a street line) and which advance a certain siting consistent with a pedestrian-oriented and street-related environment.

[31] Although the proposed addition will be largely confined to the rear of the property, the Siting Variances and the related site design do not maintain the general intent and purpose of the OP including its Special Site Policies for Site 1 in the ENCA which require a village theme for the area and parking located in the rear yard.

[32] The Siting Variances also fail to maintain the general intent and purpose of many other applicable policies in the OP including:

- A. Policy 5.4.7 which calls for land uses and building entrances to be oriented to the Corridor where possible and surrounding land use development patterns permit;
- B. Policy 9.1.5 which says that development on Corridors will be consistent with the existing or planned character and will seek opportunities to enhance the Corridor;
- C. Policy 9.2.1.19 which requires that a development interface with the public realm be held to the highest design standards;
- D. Policy 9.2.1.21 which states that development will contribute to pedestrian oriented streetscapes and have an urban built form that is attractive, compact

and transit supportive;

- E. Policy 9.2.1.24 which requires development to face the street;
- F. Policy 9.2.1.28 which says that built form will relate to and be integrated with the street line, with minimal building setbacks where spatial enclosure and street related activity is desired;
- G. Policy 9.2.1.38 which says that parking lots and structures should not be located adjacent to major streets;
- H. Policy 9.5.5.1 which sets out that parking should be located underground, internal to a building or to the rear of buildings; and
- I. Policy 9.5.5.3 which says that where surface parking is permitted it should not be located between the building and the street.

[33] Also, Policy 9.5.1.2 sets out that developments should be compatible and provide an appropriate transition to existing and planned development by having regard for, amongst other matters, the continuity and enhancement of streetscapes, the size and distribution of building mass, front yards and the orientation of buildings on a property. Compatible in the OP means development, which may not necessarily be the same as, or similar to, the existing or desired development, but nonetheless enhances an established community and coexists with existing development without unacceptable adverse impact on the surrounding area. The Siting Variances do not maintain the general intent and purpose of this policy and do not advance a development that will be compatible and enhance the established community.

[34] The Tribunal does not accept, in this instance, Mr. Quarcoopome's position that some type of landscaping along Dundas Street West to screen the proposed front yard parking adequately maintains the intent of the OP and ZBL in respect to how this Site is to address the street.

[35] The regulations in the C4-34 Zone implement the direction in the OP generally and for Site 1 in the ENCA specifically. These regulations call for buildings that are sited in close proximity to the street with parking in the back so as to advance the stated purpose of the C4 Zone – the creation of a pedestrian-oriented and street-related environment. The subject proposal locates the entire building expansion at the rear of the Site away from the street and a surface parking lot in the front yard. This proposal, and the variances which advance it, clearly do not maintain the general intent and purpose of the ZBL.

[36] It is not desirable or appropriate to redevelop or intensify the Site in a manner that is not aligned with the general intent purpose of the OP and ZBL and which will not advance the planned character of Erindale. The impact of doing so is not minor.

[37] It is clear to the Tribunal that the general intent and purpose of the OP and the ZBL is to have the Site develop in a manner which enhances and contributes to the streetscape, a pedestrian-oriented environment and the village theme – one might imagine – as an option – an attractive, historically inspired building face pulled up close to the front lot line with visible, active rooms that animate the street when in use during the day and which allow for the spilling of light and activity onto the front yard and sidewalk when in use in the darker parts of the day plus sufficient parking tucked away to the rear.

[38] Further, the Tribunal is not persuaded that the proposed site design is the only one that can appropriately respect and protect adjacent heritage properties pursuant to the OP and notes that the current site design includes a front yard surface parking lot that is closer to the street than the adjacent building faces of both the Taylor-Froebel House and the EPC and, based on the evidence of Mr. Quarcoopome, that landscaping to screen the parking lot is intended to extend out even further.

[39] The Tribunal recognizes that the policies of the OP are to be read together and this has been done. The intent of the OP to promote intensification on street edges like this, to provide a wide range of community infrastructure resources such as schools, to

advance transit supportive development beside adjacent bus routes and to generate complete communities is not, however, sufficient reason to accept Siting Variances which do not align with other applicable policies of the OP. It is also important to note, in this instance, that certain policies can be particularly relevant to certain variances. The key is to propose a development that appropriately balances and maintains the general intent and purpose of all applicable OP policies and the current proposal does not do that.

The Parking Variances

[40] The Parking Variances are as follows:

Variance 3: A total of 14 parking spaces to be provided on site whereas By-law 0225-2007, as amended, requires a minimum of 26 spaces to be provided on site in this instance;

Variance 7: To provide parking off-site on an adjacent property whereas By-law 0225-2007, as amended, requires all parking to be provided wholly on-site in this instance.

[41] The Parking Variances are interrelated and it is the Appellant's position that the two can work together to provide sufficient parking for the school expansion. It is fair to say, however, that the Appellant's position on parking evolved over the course of the hearing and into the closing submissions.

[42] The Tribunal will begin its analysis by accepting that the amount of parking required by the ZBL for the expanded school is 26 spaces. This is the measure submitted by the Appellant in the amended application.

[43] Based on Variance 7, some of the required parking is to be provided off-site on an adjacent property. Although Variance 7 does not specify the exact number of off-site spaces, a fair reading of the Parking Variances suggests that the two variances are intended to work together to provide the required 26 parking spaces with 14 spaces on site and 12 spaces off-site. This is not the case, however, and resulted in Mr. Frank asking the Tribunal in his closing submission to further amend Variance 7 to specify that

seven parking spaces are to be provided by means of off-site parking.

[44] In support of the Parking Variances, the Appellant submitted a Parking License Agreement (“Contract”) dated May 1, 2018 between the EPC and the TEA and a “Memo of Understanding Addendum to Parking Contract May 2018” (“Memo”) which was executed by the EPC on May 13, 2018 and by TEA on May 17, 2018. The information in the Memo is said to supersede the Contract.

[45] The Contract includes a schedule showing a Licensed Area with 12 parking spaces. The Memo, however, states: “Understanding that the contract, where the number of the use of 12 spaces at the rear of EPC, that this number is used solely for the purpose of meeting the City of Mississauga’s building requirements and that the actual number of cars to be parked in the lot at any time will not exceed 7.”

[46] The Appellant’s document book includes two Parking Justification Studies (dated November, 2017 and May, 2018) signed as “Reviewed by Richard Pernicky” and prepared by the firm in which Mr. Pernicky is Principal. Both of these Studies reference 12 off-site parking spaces being available to the school at the EPC.

[47] When Mr. Pernicky testified on the second day of the hearing he submitted a December 5, 2018 Addendum to the May 2018 Parking Justification Study and indicated that he had prepared the Addendum during the evening of the first day of the hearing. The Addendum indicates that 14 parking spaces are available on the Site and that seven parking spaces are available off-site at the EPC (for a total of 21 parking spaces) and , based on an analysis of the Gross Floor Area (“GFA”) of the expanded school, that:

...the proposed development will require a total of 15 parking spaces to account for an average daily peak parking demand resulting in a parking space surplus of six (6) parking spaces. Additionally...the proposed development will require a total of 20 parking spaces to account for a peak day parking demand resulting in a parking space surplus of one (1) parking space;

and;

...the proposed parking supply of 21 parking spaces (i.e. 14 on-site and seven (7) off-site) at the subject site can sufficiently accommodate the future parking demand generated from the proposed private school building expansion .

[48] In the Addendum and in his testimony, Mr. Pernicky advanced a further analysis and opinion, based on net GFA, that the 14 parking spaces on the Site could technically accommodate the parking demand for the expanded school, however, that position was called into question during cross examination and Mr. Frank in his closing submission advises that the Appellant relies on the evidence of Mr. Pernicky as set out in Paragraph 47 above.

[49] It is moot whether the number of parking spaces to be provided off-site is 12 or 7 as the Tribunal finds that the Contract and Memo do not put in place a practical or reliable arrangement for the use of any off-site parking spaces for a number of reasons including: the Contract only extends to June 30, 2023 whereas the proposed school expansion and its parking needs are more permanent (in Mr. Kehar's words the Contract is "temporary in nature"); there is no assurance that any parking agreement will be extended beyond 2023 (again "temporary"); the EPC can terminate the Contract upon 60 days' notice; and the Memo states that "EPC reserves the right to access the rented parking are(sic) upon 48 hours' notice to TEA for unexpected situations (funerals), annual events (recitals), or one-off events that generate revenue for EPC (e.g. short term rental to theatre or other renters)" and "Should weather conditions (e.g. snow) prevent parking within the designated are (sic), TEA staff will find alternative parking off the EPC site."

[50] Given the lack of permanency and reliability in the off-site parking arrangement presented at the hearing, and its inability to practically and consistently provide parking for the expanded school, the Tribunal refuses Variance 7. The general intent and purpose of the OP and the ZBL is to have the expanded school served by an adequate amount of parking and the off-site parking arrangements fail to achieve to this. Policy 8.4.2 of the OP encourages the shared use of parking and allows off-site parking where appropriate and Policy 8.4.3 indicates that the consideration of reduced parking is subject to an assessment of the impact on the surrounding area. In the Tribunal's

opinion, the off-site parking arrangement submitted in support of the variances is a mirage and is not sufficiently permanent or reliable on a daily or operational basis. It is not appropriate or desirable to develop a property based on an insufficient or unreliable parking supply. An insufficient or unreliable parking supply can have significant negative impacts on the operation of the expanded school and on the neighbourhood.

[51] Further, the Tribunal is not convinced that the EPC has the ability to “donate” parking to the school without attracting a zoning compliance issue. Mr. Davidson raised this issue and the Appellant did not resolve it. A variance which creates a zoning conformity issue for another property does not maintain the general intent and purpose of the ZBL and is not desirable or minor.

[52] In his closing submission, Mr. Frank suggests that the Tribunal remedy any concerns it has with the Contract and Memo by applying the following condition of approval: “The Academy will secure the lease of seven off-site parking spaces off site (*sic*), in a manner and means satisfactory to City staff.” The Tribunal will base its Decision on the material submitted by the Appellant at the hearing in respect to its arrangements for off-site parking which are the executed Contract and Memo. The suggested condition does not serve to secure something that was appropriate and fully fleshed out at the hearing but rather represents an opportunity for the Appellant to defer an issue that was not resolved at the hearing and to re-visit this issue solely with City staff. This issue is worthy of more scrutiny than the condition suggests and perhaps this scrutiny will necessarily involve a public process. Further, it would not be appropriate for the Tribunal to assign to City staff the sole responsibility for approving a future off-site parking arrangement when the Tribunal and City staff have such a different opinion on the appropriateness of the Contract and Memo presented at the hearing (Mr. Ruggiero testified that the Appellant’s off-site parking arrangements are acceptable to City staff).

[53] Given the Tribunal’s finding on Variance 7, the issue becomes whether the 14 parking spaces to be provided on Site can accommodate the parking demand for the expanded school and, in this regard, Mr. Pernicky’s evidence is to the contrary as set

out in Paragraph 47. Accordingly, Parking Variance 3 is refused as it does not maintain the general intent and purpose of the OP and ZBL, is not desirable for the appropriate development or use of the Site and is not minor. The general intent and purpose of the OP and ZBL is to have the expanded school served by an adequate amount of parking and that is not the case here. OP Policy 8.4.3 indicates that the consideration of reduced parking is subject to an assessment of the impact on the surrounding area. It is not appropriate or desirable to develop a property without an adequate parking supply. Insufficient parking can have significant negative impacts on the operation of the expanded school and on the neighbourhood.

[54] Although it is not necessary to explore any further in this Decision Mr. Pernicky's opinion on the minimum amount of parking that should be provided to accommodate the school expansion, the Tribunal notes that, based on the evidence, an analysis of the use of parking by current staff vs. future staff would be valuable and could be used, at a minimum, to "proof" or "test" other parking analyses and their conclusions.

The Technical Variances

[55] Variance 4 requests that four of the required parking spaces be permitted in tandem. Mr. Pernicky testified that the four tandem spaces would be functional and could be managed appropriately by the school. There was no contrary technical evidence in this regard from the City.

[56] Variance 5 requests a reduction in the width of a parking aisle from of 7 m to 6 m for certain parts of the parking lot, including the front yard parking area. Mr. Pernicky testified that such a reduction was appropriate and that the parking areas with the reduced aisle width would be functional. There was no contradictory technical evidence in this regard from the City.

[57] Notwithstanding the uncontroverted technical evidence, the tandem parking and aisle width variances are refused because they are not desirable for the appropriate development or use of the land, building or structure. They are part of a variance

package that advances a proposal that does maintain the general intent and purpose of the OP or ZBL. The tandem parking variance facilitates a reduced parking supply that is unsupportable, the aisle width variance facilitates the inappropriate front yard parking and both facilitate an unsupportable expansion proposal and site layout.

[58] Further, it would not be appropriate for the Tribunal to approve the tandem parking and aisle width variances in light of the fact that the other variances will not be authorized. The tandem parking and aisle width variances were presented as part of a larger proposal and were to be applied to specific parts of a certain site plan. The Tribunal will not approve the Technical Variances in the absence of an implementable site plan and the current site plan cannot be implemented given the refusal of the other variances. If the Technical Variances were approved, it would provide the Appellant with some right to implement tandem parking and a reduced aisle width in a future redevelopment and would relieve said variances from the scrutiny associated with how they are to be implemented on the Site in a functional plan. Further, the Appellant did not submit that it wished any individual variance to be approved in the absence of the approval of the other variances.

[59] In summary, the Tribunal finds that the Variances, both individually and collectively, do not maintain the general intent and purpose of the OP or ZBL, are not desirable for the appropriate development or use of the land, building or structure and are not minor. On the land use planning issues, the Tribunal prefers, accepts and relies on the evidence of Mr. Davidson.

Other Considerations

[60] The Tribunal is satisfied that its Decision to dismiss the appeal and refuse the minor variances has appropriate regard to matters of Provincial interest, is consistent with the PPS and conforms to the Growth Plan. Such overarching goals as intensification, transit supportive development and the use of existing infrastructure are to be balanced with other applicable tests, criteria and policy and, in this particular case, the proposal does not meet the tests and criteria in s. 45(1) of the Act, will have

negative impacts and does not represent good planning.

[61] In his written closing submission, Mr. Frank indicates that the Appellant would welcome a number of conditions intended to address concerns that the Tribunal might have with the proposal presented at the hearing. The Tribunal declines to apply these conditions as, within the findings of this Decision, they are not appropriate.

[62] Mr. Frank submitted previous Ontario Municipal Board and/or court decisions in support of the Appellant's position. While each application is evaluated on its own merits, the Tribunal reviewed the submitted cases in advance of reaching a decision on this case.

ORDER

[63] The Tribunal orders that the appeal is dismissed and the variances in the amended application are not authorized.

"Thomas Hodgins"

THOMAS HODGINS
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
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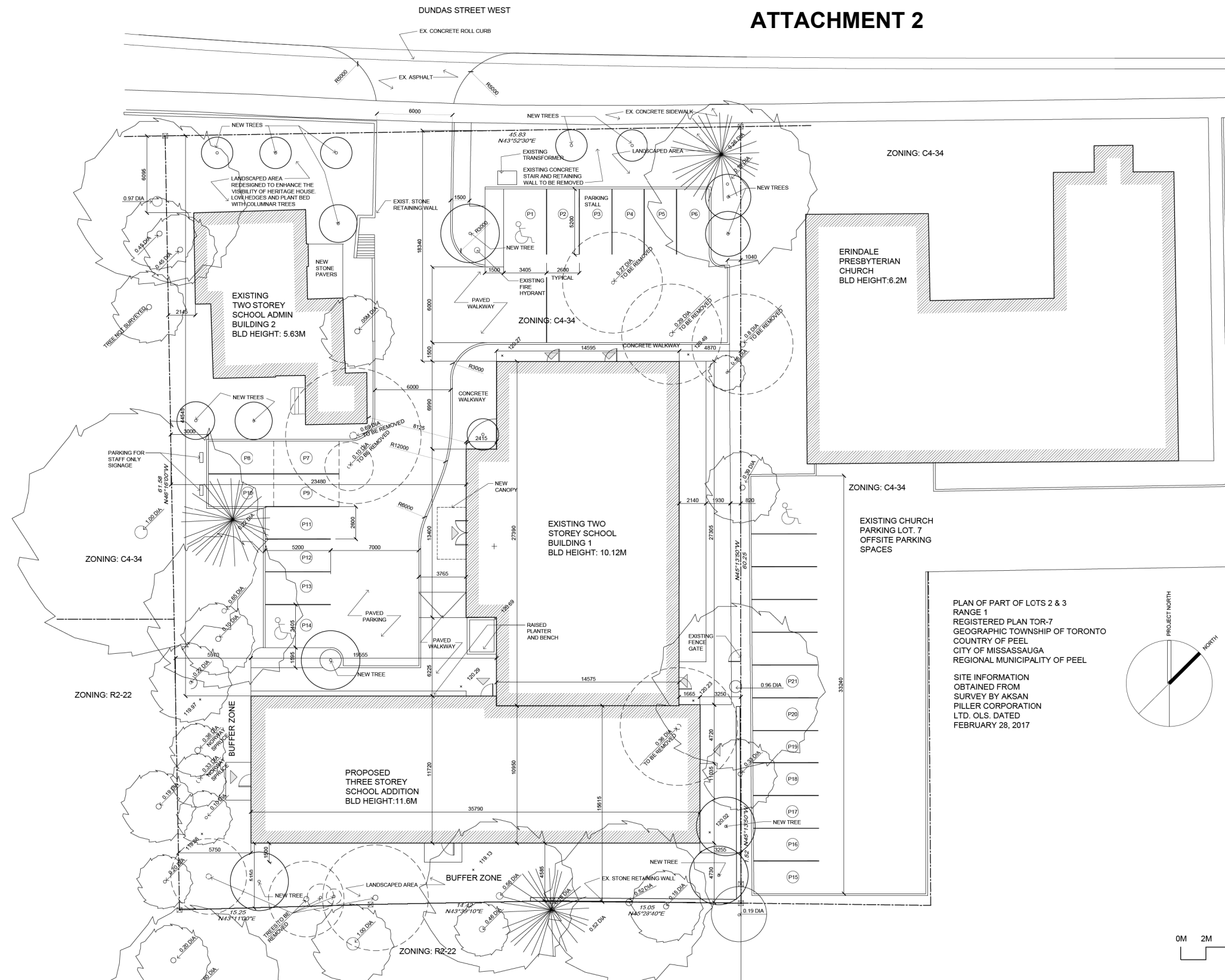
ATTACHMENT 1

**Application by 2539088 ONTARIO INC. CIO THE ERINDALE ACADEMY
for the property located at 1576 DUNDAS STREET WEST**

The owner/applicant requests the Tribunal to authorize a minor variance to permit a private school on the subject property proposing:

1. A front yard of 44.96m (approx. 147.51ft) measured to the proposed addition whereas Bylaw 0225-2007, as amended, permits a maximum front yard of 3.00m (approx. 9.84ft) in this instance;
2. 100% of the length of a streetwall set back beyond the maximum front yard of 3.00m (approx. 9.84ft) whereas By-law 0225-2007, as amended, permits a maximum of 30% of the length of a streetwall to be set back beyond the maximum front yard of 3.00m (approx. 9.84ft) in this instance;
3. A total of 44 14 parking spaces to be provided on site whereas By-law 0225-2007, as amended, requires a minimum of 26 parking spaces to be provided on site in this instance;
4. A total of 4 of the 14 parking spaces to be provided on site in a tandem configuration, whereas By-law 0225-2007, as amended, does not permit tandem parking spaces to be included in the calculation of total parking supply;
5. An aisle width of 6.00m (approx. 19.68ft) whereas By-law 0225-2007, as amended, requires a minimum aisle width of 7.00m (approx. 22.96ft) in this instance;
6. Parking to be provided between a streetwall and a lot line that is a street line whereas Bylaw 0225-2007, as amended, does not permit parking between a streetwall and a lot line that is a street line in this instance;
7. To provide parking off-site on an adjacent property whereas By-law 0225-2007, as amended, requires all parking to be provided wholly on-site in this instance;

ATTACHMENT 2

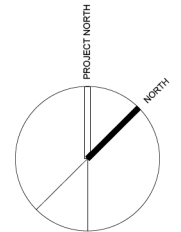


SITE STATISTICS

ZONING DESIGNATION:	C4-34
CURRENT PERMITTED USE:	PRIVATE SCHOOL
PROPOSED USE:	PRIVATE SCHOOL
LOT FRONTAGE:	45.82 M
SITE AREA:	2,778.67 M ²
BUILDING AREA:	
EXISTING SCHOOL BLD 1:	431.68 M ²
EXISTING SCHOOL BLD 2:	148.00 M ²
TOTAL EXISTING:	579.68 M ²
PROPOSED SCHOOL ADDITION:	407.10 M ²
TOTAL:	986.78 M ²
% LOT COVERAGE:	
EXISTING:	20.98%
PROPOSED:	35.51%
GROSS FLOOR AREA (GFA):	
EXISTING SCHOOL BUILDING 1	
BASEMENT	167.25 M ²
GROUND FLOOR	431.68 M ²
2ND FLOOR	431.68 M ²
TOTAL EXISTING SCHOOL	1030.61 M ²
EXISTING SCHOOL BUILDING 2	
BASEMENT	0 M ²
GROUND FLOOR	151.5 M ²
SECOND FLOOR	65.24 M ²
TOTAL	216.74 M ²
TOTAL EXISTING	1247.35 M ²
PROPOSED	
BASEMENT	405.8 M ²
GROUND FLOOR	252.3 M ²
SECOND FLOOR	404.2 M ²
THIRD FLOOR	409.6 M ²
TOTAL PROPOSED	1464.1 M ²
TOTAL PROPOSED AND EXISTING:	2711.45 M ²
TOTAL GROSS FLOOR AREA - NON RESIDENTIAL	
HOUSE	178.1 M ²
BASEMENT	59 M ²
GROUND	432.5 M ²
SECOND	696.3 M ²
THIRD	321.5 M ²
TOTAL	1687.4 M ²
FLOOR AREA RATIO:	
EXISTING:	39%
PROPOSED:	77%
BUILDING HEIGHT (TO AVERAGE GRADE):	
PERMITTED:	SLOPED 16M 3 STORIES FLAT 12.5M 3 STORIES
PROPOSED:	FLAT 11.91 M 3 STORIES
SETBACKS:	
NORTH (FRONT)	18.34 M
SOUTH (REAR)	3.78 M
EAST (SIDE)	3.25 M
WEST (SIDE)	5.75 M
PARKING SPACES:	
EXISTING:	15 SPACES INCL. 1 BF SPACE
REQUIRED:	25 SPACES*
PROPOSED:	14 SPACES ON SITE INCL. 2 BF SPACE & 2 TANDEM SPACES. 7 SPACES OFFSITE.
TOTAL:	21 SPACES INCL. 2 BF SPACE
CALCULATION: AS PER TABLE 3.1.2.2 MISSISSAUGA PARKING PART 3 REQUIRED: 1.5 SPACE / 100 M ² (1687.4 M ² / 100) * 1.5 = 25.3 = 25 SPACES WHEN ROUNDED DOWN (AS PER 3.1.1.4 FROM MISSISSAUGA PARKING PART 3)	

PLAN OF PART OF LOTS 2 & 3
RANGE 1
REGISTERED PLAN TOR-7
GEOGRAPHIC TOWNSHIP OF TORONTO
COUNTRY OF PEEL
CITY OF MISSISSAUGA
REGIONAL MUNICIPALITY OF PEEL

SITE INFORMATION
OBTAINED FROM
SURVEY BY AKSAN
PILLER CORPORATION
LTD. O.L.S. DATED
FEBRUARY 28, 2017



General Notes

7	LPAT	18/11/29
6	PARKING LAYOUT REVISION	18/05/08
5	PRELIMINARY ZONING REVIEW 2 R1	18/04/24
4	PRELIMINARY ZONING REVIEW 2	18/01/25
3	COMMITTEE OF ADJUSTMENTS	17/11/17
2	HIA (Heritage Impact Assessment)	17/10/12
1	COORDINATION	17/09/26
No.	Revision	Date



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Toronto Ontario
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The Erindale Academy
School Addition
1584 Dundas Street West
Mississauga, Ontario

Schematic Design
Site Plan

Project No. 1711	Sheet No. A101
Date:	
Scale: 1:150	