

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: December 15, 2021

CASE NO(S): PL210284

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

Appellant:	Prombank Investments Limited
Applicant:	2451681 Ontario Inc. and Greycan 6 Properties GP Inc.
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	1330 Eglinton Ave. E.
Municipality:	City of Mississauga
Municipal File No.:	A394/20
OLT Case No.:	PL210284
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OLT Case Name:	Prombank Investments Limited v. Mississauga (City)

Heard: October 13, 2021 by Video Hearing

APPEARANCES:

Parties

Counsel

Prombank Investments Limited
("Prombank")

R. Kehar

2451681 Ontario Inc. and
Greycan 6 Properties GP
Inc. ("Applicant" or "K1")

J. Shapira

DECISION DELIVERED BY D. CHIPMAN AND ORDER OF THE TRIBUNAL

[1] The Tribunal had before it one variance for determination, namely, whether to permit 329 parking spaces for the site known as 1330 Eglinton Ave. East ("Subject Property"), in the City of Mississauga ("City"), whereas Zoning By-law No. 0225-2007 requires a minimum of 457 parking spaces.

[2] The Applicant submitted an application to the City's Committee of Adjustment ("COA") to permit a 3,874 square metre ("m²") indoor electric go-kart track with ancillary food, beverage and arcade use in an industrial/commercial building on the Subject Lands that fails to supply the parking spaces required by the City's Zoning By-law No. 0225-2007 (the "ZBL").

[3] Upon approval of the application by the COA on April 15, 2021, Prombank appealed the decision pursuant to s. 45(12) of the *Planning Act* (the "Act").

[4] The subject property is located at the southwest corner of Eglinton Avenue East and Dixie Road. A portion of Building "D" is where the Applicant proposes to locate the K1 indoor go kart facility.

[5] The objective of the Applicant is to repurpose the existing warehouse use of Unit 1, in Building "D", to a recreational establishment use, of which, the use is permitted under the City ZBL. The existing building is to remain unmodified, and there is no change in Gross Floor Area ("GFA"). The intention of this matter is to justify that the provision of 206 parking spaces for Buildings A – D (Bldg. E is not calculated into this amount as per paragraph 39) as adequate for the proposed recreational establishment.

[6] The City's Planning Staff's report dated March 3, 2021, supported the application and, as a result, the City took no position on this appeal, and as such, did not attend the hearing.

Site and Area Context

[7] The subject site is a multi-pad, multi-tenant commercial plaza located upon the south-west corner of the Eglinton Avenue East and Dixie Road intersection. The site is occupied by five (5) single-storey, mixed-use commercial buildings with a total GFA of 12,948.83 m². There is a mutual full moves access off Eglinton Avenue East that services the Subject Property (including Building “D”) and the Prombank Lands at 1250-1300 Eglinton Avenue East. The Prombank Lands contain seven (7) buildings in total.

[8] There is no barrier between the Subject Property and the Prombank Lands at the front of these sites. Vehicular and pedestrian traffic can travel between these two sites when entering off Eglinton Avenue East.

[9] The immediate neighbourhood along this portion of Eglinton Avenue East is a mixture of multi-tenant commercial plazas; however, the neighboring section of Dixie Road provides a transitional area, with both office-industrial and warehouse-industrial land-uses being prevalent.

ISSUES

[10] The Tribunal, having heard the evidence of both parties, must decide whether through a zoning by-law amendment there will be sufficient parking available to serve the combined parking demands / zoning by-law requirements of various uses on the subject multi-use / multi-building site to satisfy that the four tests in s. 45(1) of the Act:

1. Does it maintain the general intent and purpose of the Official Plan (“OP”)?
2. Does it maintain the general intent and purpose of the ZBL?
3. Is it desirable for the appropriate development or use of the land?
4. Is it minor?

[11] In addition, s. 3(5) of the Act requires that decisions of the Tribunal affecting planning matters be consistent with the Provincial Policy Statement, 2020 (“PPS”). The Tribunal must also have regard to matters of Provincial interest in s. 2 of the Act, as well as regard for the decision of the municipality and the information it considered in the course of making its decision, in accordance with s. 2.1(1) of the Act.

PLANNING EVIDENCE AND ANALYSIS

[12] The following individuals were qualified by the Tribunal to provide expert opinion evidence: David McKay, land use planning, and Richard Pernicky, transportation planning on behalf of K1 and Michael Tedesco, transportation planning on behalf of Prombank. Prombank reserved the opportunity to call Lindsay Dale-Harris as an expert in land use planning but did not call on her testimony.

PPS and matters of Provincial interest

[13] The Tribunal shall also have regard to matters of Provincial interest and to information and material that the COA considered in making its decision.

[14] Given the limited nature of the variance, there is little contained in the higher order policies of the PPS that are engaged by the Application, there was a general agreement amongst the experts that the requested variance is a matter which is, local in nature.

[15] However, when asked to turn his mind to the PPS and matters of Provincial interest, Mr. McKay referenced policies speaking to the efficient use of land, which sustains the financial well-being of the Province and municipalities over the long term (PPS 1.1.1 (a) and (e)) while promoting transit-supportive development.

[16] Turning to the Act, s. 45(1), he opined the Application meets this section of the Act as it is desirable for the appropriate development and use of the building.

[17] In addressing the four tests under s. 45(1), Mr. McKay explained that, although the parking does not accord with that of the ZBL, the requested variance would not result in a change to the land use of the Subject Property and, in general, the intent and purpose of the ZBL would be maintained.

[18] The Tribunal finds that the Application satisfies the Provincial interests.

Does the Variance maintain the general intent and purpose of the OP?

Region of Peel Official Plan (“ROP”)

[19] Mr. McKay took the Tribunal through the Region of Peel Official Plan particularly, itemizing s. 5.9.9.2.7 regarding parking management strategies. He stated the proposal meets the ROP intention to encourage less car usage and reductions in parking by encouraging transit. The location of the proposed go kart facility is on Eglinton Avenue East, a major transit corridor which is serviced by Mississauga Transit.

Mississauga Official Plan (“MOP”)

[20] The site is located within the Northwest Employment Area Character Area and is designated Mixed Use and Business Employment by the MOP. Pursuant to s. 11.2.11 (j) (Business Employment), this designation permits entertainment, recreation and sports facility uses.

[21] It was noted by both parties that the Applicant’s proposal of an indoor go karting facility meets the purpose and general intent of the MOP.

[22] Turning to the MOP, Mr. McKay reiterated this by stating that s. 8.4.2 of the MOP:

encourages the shared use of parking and allow off-site parking, where appropriate

[23] Further, he stated that the Application meets s. 8.4.3 of the MOP, which encourages the reduction of off-street parking requirements as a means to encourage the greater use of transit.

[24] Mr. McKay provided the Tribunal with photo illustrated overview of the site and described the proposed use of the building as having a go kart track, arcade, restaurant/bar (the Paddock Lounge) for the use of patrons, viewing areas and a merchandise counter. It was his opinion that the illustrated floor plan was representative of the standard template K1 uses in all its facilities. He stated that study conducted by Mr. Pernicky reflects the same usage of the proposed site as the proxy site with the main focus being the track itself as well as ancillary options for patrons to enhance their visit.

[25] The Tribunal is satisfied that the Applicant's proposal meets the general intent of the MOP as it encourages transit use and shared use of parking. Further, the proposal meets the Mixed Use and Business Employment designation.

Does the proposal maintain the general intent and purpose of the ZBL?

[26] As per the ZBL, the Subject Property is zoned C3-1 (Commercial) and E2 (Employment). The existing development has a GFA of 3,874 m² for recreational establishment uses. Based on the City's by-law definitions, recreational establishment use is defined as:

a **building, structure** or part thereof, designed and equipped to be used for athletic and leisure activities and may include such facilities as a fitness centre, racquet club, billiard hall, bowling alley, arena, curling rink, indoor facility used for golf, baseball or soccer, indoor playground.

[27] In accordance with the ZBL, Table 3.1.2.2, (Required Number of Parking Spaces for Non-Residential Uses), the table regulates the required parking rates for the uses permitted on the site. The intent under the By-law is to quantify the amount to ensure

that each structure is self-sufficient in providing adequate parking accommodations based upon its intended use.

[28] The City required an onsite survey account for all buildings on site. City Staff applied the proxy site demand ratio and determined that for the proposed Recreational Establishment, the overall onsite demand will be sufficiently accommodated by the 329 spaces provided onsite.

[29] Mr. McKay stated that through an online application system, City staff track an application once received and staff comments are added as the application proceeds through the process to the final building permit and/or the application meets final approval. He produced the spreadsheets to ensure the Tribunal that the Application did not create any concerns to City Staff.

[30] Mr. Pernicky clarified the access from Eglinton Ave. East is shared in perpetuity through an easement. He confirmed the shared fencing between the buildings along the property line starting at the frontage of each of the building and continued to the rear of the buildings allowing enough mutual access to turn into either building areas.

[31] Mr. Pernicky informed the Tribunal that a Parking Utilization Study ("PUS"), was prepared dated, February 11, 2021, and an addendum to that study dated October 4, 2021, were both in support of the Application.

[32] He took the Tribunal through the survey tables and graphs in the PUS in detail. He explained that the surveys on the Site occurred over a 10-hour period. The survey results were combined to produce future total demand at the site.

[33] Through the Applicant's Planning Justification Study, which was utilized pre-COVID data and the Downsview K1 site as a proxy site for his study, he further identified that only the parking provision and demand of Buildings A – D were considered in the analysis as the parking provision for Building E is met by its existing

supply (i.e. 123 spaces required, and 123 spaces provided). To quantify peak demand characteristics for the subject site, the selected survey methodologies (i.e. date and duration) were selected.

[34] He explained that a key feature in undertaking the parking utilization work is to identify peak periods. In this case, the anticipated peak operational parking demand were Fridays and Saturdays.

[35] He stated that at the time of the surveys, the City was in Stage 3 of reopening and all units were operating except for Building C (i.e. the vacant building) and unit 1 of Building D (i.e. the proposed development). Mr. Pernicky disagreed with Mr. Tedesco's concerns of using pre-COVID data from 2018 and that of 2021.

[36] Mr. Pernicky stated the utilization rates used were calculated based on the GFA of the existing operational units (i.e. the total GFA of Buildings A – D minus the GFA of the proposed recreational establishment), which was 5,370.16 m².

[37] To quantify an empirical approach to suggest a reasonable parking provision rate, he conducted parking utilization surveys at a proxy site. The proxy site has the same owner as the proposed development and has a GFA of 4,298 m². The parking at the proxy site is provided in a shared parking configuration.

[38] The City Terms of Reference ("City TOR") for Parking Utilization Studies for Site Specific Applications indicates that:

The majority of site-specific Parking Utilization Studies are undertaken for an existing building where an increase in floor area of a particular use or the introduction of a new use is being proposed. In these types of situations, an assessment of the existing reoccurring peak parking demand and demand ratio, and an analysis of additional parking spaces required by the proposal, can be done with reasonable accuracy and confidence.

An oversupply of parking is costly for business, visually unattractive, and may negatively impact urban design and streetscape. Conversely, an undersupply of spaces may compromise access and circulation, and create spillover problems for adjacent uses. It is, therefore, important for the supply of

parking to strike a balance between oversupply and undersupply. (Ex. 3, Tab 31)

[39] Mr. Pernicky advised the Tribunal that the City TOR are robust, and that he had done this and a number of other studies following these TOR. He explained that a key feature in undertaking the parking utilization work is to identify peak periods. In this case, the anticipated peak operational parking demand were Fridays and Saturdays.

[40] Mr. Pernicky explained that this site data was provided by the City in its Parking Allocation Report. The Site Plan shows that applying the zoning rate to each use on the Site plus the ZBL rate for "Recreational Establishment Use" (4.5 spaces / 100 m²) for Building D, Unit 1 (K1), would result in 457 parking spaces being required, whereas 329 parking spaces are provided.

[41] Mr. Pernicky explained to the Tribunal that not all 329 parking spaces shown on the Site Plan exist today. The actual on-site conditions, as of today, shows a total of 255 parking spaces.

[42] He further explained that the required parking rate for "Recreational Establishment Use" of 4.5 spaces per 100 m² is a very high standard and that the definition of "Recreational Establishment Use" includes a wide variety of uses, resulting in the need to rationalize the parking rate and decide whether that ZBL rate is suitable for the use in question.

[43] Mr. Pernicky stated that if one applied the rate of ZBL to 4.5 spaces per 100 m² to the K1 unit, it would result in the requirement for 174 parking spaces. In his opinion, the nature of the proposed use, where the majority of the area is used for a track, suggested that that rate was too high. His parking studies were aimed at determining what a more accurate demand would be. The PUS explains that the zoning by-law rate for a Recreational Establishment does not reflect the demand to support an indoor go karting facility, where most of the GFA is attributed to the racing track.

[44] It was his conclusion that there are adequate spaces on the subject site to accommodate the expected future total weekend demand on the total site after the proposed development is operational. He was able to determine that those peak demands were not as significant if he were to compare the site being used as a warehouse which, he opined would generate significantly more parking spaces.

[45] Understanding the concerns of the Appellant and also to ensure clarity to patrons that parking is to the rear of the building, Mr. Pernicky agreed that the use of signs and the striping of the parking lot behind the building would aid in deflecting the use of parking on the neighbouring site.

[46] Mr. Tedesco informed the Tribunal that the entrance to the go-kart facility is only a few metres east of the western property line. There are a small number of parking spaces provided directly in front of the go-kart facility's main entrance facing Eglinton Avenue East.

[47] He stated that the vast majority of proposed parking spaces are located to the rear of the building. Due to the proposed orientation of the go-kart facility, the majority of parking for the facility will be behind the building and away from any of its primary entrances. Conversely, due to its proximity to that front entrance, parking on the Prombank lands will be considerably closer, in his opinion, more attractive to users of the go-kart facility.

[48] He informed the Tribunal that the risk of frequent trespass and unauthorized parking by customers of the go-kart facility is substantial, and that this behaviour will take away much needed parking from the Prombank's businesses.

[49] Mr. Tedesco opined that after a peer review of the studies undertaken by Mr. Pernicky, the Application does not maintain the general intent and purpose of the ZBL. Stating concerns with the methodology of the study on the proxy site and on the anticipated number of patrons moving through the facility, the studies did not reflect the

total hours the attendees spend on site nor were the numbers reflective of post-COVID counts as the province is not yet at that point. He also stated his concern with truck loading requirements expressing that there was insufficient evidence that shows the swept path required for trucks to access loading docks at the rear of the property.

[50] As a result, he anticipates that customers are likely to utilize parking facilities that are closer to the go-kart facility's known and advertised entrance facing Eglinton Avenue East where only a small fraction of parking spaces are located; there will be significantly more attendees than what Mr. Pernicky's study shows and that trucks will have insufficient room to access loading at the rear of the property.

[51] The Tribunal is satisfied that the studies undertaken by Mr. Pernicky, are reflective of the shared parking sufficiency with other tenants on site. Further, the Tribunal, through the evidence presented, understands there will be peak period usage due to the nature of the business. Through the use of parking designated markings to ensure accurate parking space indication and signage as per the Order below, the Tribunal is satisfied that there will be sufficient spaces to accommodate the proposed use of the site. Through introduction and enhancement in lighting on the site, as suggested by both Parties (as per the Order), traffic movement for patrons locating parking will be safer and readily visible.

Is the proposal desirable for the appropriate development of the subject lands and minor in nature?

[52] Based on a survey of the entire site, Planning Staff were of the opinion that there is sufficient parking to accommodate all five buildings on site. As such, the Variance represents the orderly development of the lands, and is minor in nature.

[53] Mr. McKay recognized, there is a need to balance the amount of parking provided at the Subject Property so that an oversupply of parking is not provided nor is an undersupply of parking provided. Mr. McKay opined that the Variance should be

approved because he believes there will not be an undersupply of parking based on Mr. Pernicky's evidence included in his parking justification report.

[54] Mr. Pernicky, through the surveys undertaken in accordance with the City's Parking Guidelines, opined that there will be sufficient parking to accommodate all uses on site including peak hour and Friday/Saturday demands.

[55] Mr. Pernicky recognized that the lack of signage could be a true source of driver confusion when entering the shared driveway. In response to Prombank's concerns, in his Parking Study Addendum, Mr. Pernicky created a signage plan to direct K1 customers onto the Site (Ex. 1, Tab 36) (the "Signage Plan").

[56] He opined that based on the advice of K1, 50% of customers are repeat customers so they will become accustomed to where the parking spaces are located. Nonetheless, it was his view that signage will direct and educate newer customers that there is parking at the rear of the building.

[57] Mr. Pernicky stated that increased and sized signage would be an appropriate condition to the Variance.

[58] In contrast, Mr. Tedesco stated the Application is not minor in nature and that Prombank and its tenants will be significantly impacted by a proliferation of unauthorized parking and trespass onto their Adjacent Lands.

[59] In his opinion, other impacts Prombank could encounter would be significant expense to ensure that customers of the Go-Kart Facility do not trespass onto the Adjacent Lands; have to constantly monitor and seek removal of unauthorized vehicles on the Adjacent Lands; experience more frequent "wear and tear" of its facilities; face complaints from its tenants regarding unauthorized parking, which could result in vacancies; and be subject to liability concerns relating to unauthorized visitors on the Adjacent Lands.

Desirability

[60] It was Mr. Tedesco's opinion that the Application is not desirable for the appropriate development or use of the Subject Lands. It will contribute to a non-orderly configuration of parking that will entice visitors to park outside the boundaries of the Subject Lands.

[61] He noted that many of the parking spaces currently in front of the go-kart facility are often occupied by customers and staff of the adjacent tenant on the subject lands, further increasing demand on the Prombank Lands. Without appropriate mitigation, this will cause spillover effects as K1 patrons will choose to park on the Prombank Lands as opposed to the rear and certain parts of the side of Building "D". These spillover effects will adversely impact the Prombank Lands.

[62] The City and the Applicant both agree the use of the building for the purpose of the go karting facility is desirable as a recreational use with the parking Variance being minor in nature.

[63] The Tribunal is satisfied that the proposed use is appropriate for the building and is in a desirable location that is serviced by transit and facilitated with parking. With both Parties agreeable to enhanced signage and lighting, to encourage patrons to park in the identified, designated areas, the Tribunal is satisfied that the relief sought is minor in nature.

ANALYSIS AND DECISION

[64] The Tribunal prefers the evidence of Mr. Pernicky and Mr. McKay, and finds the requested variance is desirable for the appropriate development or use of the building and land.

[65] In the context of the surrounding area, upon examination of the visual evidence, the photos, and drone footage, the Tribunal is persuaded that with the conditions set out through the following Order, the Applicant will have taken appropriate steps to mitigate potential overspill of parking onto the Prombank Lands.

CONCLUSION

[66] The Tribunal finds the requested Variance, subject to the following conditions, is consistent with the PPS and has regard for matters of Provincial Interest, insofar as it seeks to provide for a recreational use in an appropriate transit supportive location, which is located on a major arterial road with transit services.

[67] Based on the totality of the evidence, the Tribunal is satisfied that the variance, subject to conditions set out in paragraph [68] and the implementation of the conditions prior to K1 commencing operation, meets the criteria established in s. 45(1) of the Act.

ORDER

[68] **THE TRIBUNAL ORDERS** that the appeal is dismissed and the Variance to By-law No. 0225-2007 is authorized subject to the following condition, which are to be implemented prior to K1 commencing operation on the site:

- a. The Applicant shall install signage directing customers to park along the side and at the rear of Building “D”, and to ensure that those signs meet the requirements of City Staff. The signs shall be illuminated.
- b. The Applicant shall illuminate the drive aisle that connects the front of Building “D” with the proposed parking at the rear of Building “D” and illuminate the parking area behind Building “D”.

- c. The Applicant shall advise all customers who book online reservations for the K1 Facility that parking at the adjacent Prombank Lands is not permitted.
- d. The Applicant shall stripe the lot at 1330 Eglinton Avenue East, in accordance with the site plan that provides 329 parking spaces on the subject site by the City of Mississauga's buildings department.
- e. The Applicant shall make all of the modifications shown on the site plan at Exhibit 1, Tab 35, including the addition of the new parking spots, the revisions to loading spaces and the addition of new curb works to the satisfaction of the City of Mississauga.
- f. The Applicant shall demonstrate to the satisfaction of the City of Mississauga that the elimination of loading spaces behind Buildings "B", "C" and "D" does not create a truck turning movement issue for tractor trailer trucks that are required to service the adjacent tenant within Building "D" or any of the other surrounding tenants.

[69] So orders the Tribunal.

"D. Chipman"

D. CHIPMAN
MEMBER

Ontario Land Tribunal

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