

APPLICANT'S RESPONSE TO TOWN OF GEORGINA REPORT NO. DS-2024-0026

SUBJECT: MINOR VARIANCE APPLICATION A02-24; 443 THE QUEENSWAY S., KESWICK

Town's Report No. DS-2024-0026 states ***"Staff are satisfied that the proposal is desirable ...pending an approval of an amendment to the existing Site Plan Agreement"***. Staff indicates that it will not support the application *"as it is"*, but indicates that *"if the application is to be approved, the following requirements apply"* and that. The Applicant will agree to the conditions listed by Staff.

The Report states that the variance does not meet 2 tests. However the Applicant submits they do as follows:

Paragraph 5 (ii)- Is the general intent and purpose of the ZBL maintained?

1. Zoning Bylaw 500 ("ZBL 500") has no zoning category for a "child care" under the new Child Care & Early Years Act, 2014. There is an obsolete category of a "Day Nursery" (under the *Day Nurseries Act*) which was legislation was repealed by the Province in 2018. The Town Report acknowledges that there is a Phase 2-Comprehensive Zoning Bylaw Review to modernize ZBL 500, suggesting that "child care" will be added as a use in Applicant's C4 Zone as it conforms to the urban area included in Councils 2023-2017 Corporate Strategic Plan.
2. Staff's original Report mistakenly dealt with a C5 Tourist Zone. At instance of Applicant, this was only corrected to refer to a C4 Zone, but Staff's report does not address the added permitted uses in the C4 Zone such as **"church"**, **"service shop, personal"**, **"club"**, which under s.45(1) of the Planning Act are complimentary, similar, comparable and meet the general intent to allow "child care"; and/or conforms to those uses permitted under s.45(2)(b) of the Planning Act (especially "church" and "service"). Further, the Applicant property has a focus towards children services as the property is leased to a gymnastic studio and karate studio for children and offers children focused services (eg. Kumon, Georgina Learning Center) and other personal services that are particular to the child or the parent (South Lake Regional Health Centre and the Family Dentist). The Applicant provides a well rounded community center.
3. Precedent decisions of other Committee of Adjustments have approved a minor variance to allow day nursery in similar commercial C4 zones, ie: that it meets the general intent and purpose of commercial zones and is minor:
 - a.in City of Brampton File A-2023-0119, a "Day Nursery" was allowed in a "Service Commercial" zone (see Attachment A- see highlighted page 2 & 3);
 - b.in Town of Clarington File A2021-0029, a "Day Nursery" was allowed in a C4 and C5 zoned commercial building (see Attachment B- see highlighted page 7 & 8).
4. There are currently 2 churches in Keswick that operate a "day nursery" , ie: Keswick United Church (Blissroot Childcare) , 85 Osbourne St. and Keswick Christian Church, 2 Old Homstead Rd.
- 5.Private or commercial schools are currently permitted in other C4 zones, namely in a C4-11. The use of schools or education facilities are not adverse to commercial zonings, therefore nether school day nursery which is also form of schooling.
6. There are currently 2 other child care centres nearby on The Queensway S.:
 - a. Upper Canada Child Care 325 The Queensway S., with an outdoor playground fronting on the street;
 - b. Learning Together Child Care 319 The Queensway S.

This would indicate that any proximity to the street, is either mitigated by an appropriate buffer (dealt with at siteplan) or not objectionable to the Town (as it has been permitted previously).

Paragraph 5 (iv)- Is the relief sought minor in nature?

- 1.The Applicant Glenwoods Centre is a 10,755 sq. m. retail shopping centre, for which minor variance only seeks one small building of 334 sq. m. of less than 5% (formerly occupied by Scotiabank and The Source(Bell)).

2.The Minor Variance only seeks to add a “child care” which falls within or similar to the uses permitted in the current C4 Zone, namely a “church”, “personal service” or “club”, which under s.45(1) of the Planning Act is minor or under s.45(2)(b) of the Planning Act conforms with the uses permitted in a C4 Zone.

SUMMARY:

The Applicant respectfully submits that the Application should be approved as:

1)pursuant to s.45(1) of the Planning Act, the use is complimentary desirable and meets the general intent and purpose of a C4 Zone category in the ZBL 500, as shown by other similar or comparable uses (ie: church and personal services), and that the relief is minor supported by other decisions of the Committee of Adjustments (attached); and/ or

2) pursuant to s.45(2)(b) of the Planning Act conforms with uses permitted in a C4 Zone (ie: church and personal services);

and should be approved subject to the conditions imposed by the Town Staff which the Applicant will abide by.

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Lawyer for Applicant
2433264 ONTARIO INC. o/a Glenwoods Centre



Report Committee of Adjustment

Filing Date: May 1, 2023
Hearing Date: August 1, 2023
File: A-2023-0119
**Owner/
Applicant:** 10254 HURONTARIO PROPERTY INC.
Address: 10254 Hurontario Street
Ward: 2
Contact: Megan Fernandes, Planning Technician

Recommendations:

That application A-2023-0119 is supportable, subject to the following conditions being imposed:

1. That the extent of the variance be limited to that shown on the sketch attached to the Notice of Decision;
 2. That a Record of Site Condition (RSC) must be filed (the RSC property limits must match the limits of the proposed development) with the Ministry of the Environment, Conservation and Parks (MECP) and a copy be provided to the City. The RSC shall certify the subject site, as being suitable for the correct intended use (i.e. Institutional Use);
 3. That the applicant provide copies of final ESA reports supporting the RSC to the City Environmental Engineering Staff;
 4. That a Record of Site Condition (RSC) must be filed in the Ministry's Environmental Registry, prior to the issuance of a building permit;
 5. That failure to comply with and maintain the conditions of the Committee shall render the approval null and void.
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Background:

Existing Zoning:

The property is zoned 'Service Commercial - Special Section 3652', according to By-law 270-2004, as amended.

Requested Variance:

The applicant is requesting the following variance:

1. To permit a day nursery whereas they By-law does not permit the use.

Current Situation:

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

The subject property is designated as 'Industrial' in the Official Plan and 'Highway and Service Commercial' in the Snelgrove - Heartlake Secondary Plan (Area 1).

The 'Industrial' designation provides for industrial related uses as well as limited service and retail uses, open space, public and institutional uses that may be permitted. The 'Highway and Service Commercial' designation identified in the Snelgrove-Heartlake Secondary Plan include restaurants; convenience stores; personal service shops; banks; and retail establishments. These uses support the needs of the surrounding industrial and residential area.

While the requested variance to permit the day nursery use is not permitted under the current 'Industrial' designation, the proposed day nursery will provide service to the existing community as well as those passing in the area. The requested variance not considered to have significant impacts within the context of the Official Plan and subject to the recommended conditions of approval, are considered to maintain general intent of the Official Plan.

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

The property is zoned 'Service Commercial - Special Section 3652', according to By-law 270-2004, as amended.

Variance 1 is requested to permit a day nursery whereas they by-law does not permit the use. The intent of the by-law in regulating the permitted uses within a certain zone is to ensure that those uses can function effectively together.

Within the subject property's 'SC-3652' zoning, the permitted limited commercial uses were chosen to provide supporting services to the residential and industrial community and those passing in the area. The proposed day nursery use is also complementary to the existing residential neighbourhood located east of the property and the commercial and industrial uses located north and south along Hurontario Street, offering a daycare service to the employment base. Subject to the recommend conditions of approval, the variance maintains the general intent and purpose of the Zoning By-law.

3. Desirable for the Appropriate Development of the Land

The variance is requested to permit a day nursery to operate in a commercial building. The proposed use will be operating within a designated heritage property identified as the Armstrong House. Heritage Staff have reviewed the application and have no concerns that the proposed use will have any

significant impacts on the heritage features of building. Additionally, the heritage attributes of this property were reviewed as part of Site Plan Application SP18-058.00.

Through the circulation of this application, the applicant was advised that the proposed use to a day nursery is considered a change to a more sensitive land use, a Record of Site Condition (RSC), is mandated by the Environmental Protection Act. In order to file an RSC, an Environmental Site Assessment (ESA) is required. The applicant has provided staff with a draft Phase One Environmental Site Assessment which was reviewed by the City's Environmental Engineering department. The applicant is to be made aware that the Record of Site Condition (RSC) must be filed (the RSC property limits must match the limits of the proposed development) with the MECP and a copy be provided to the City. The RSC shall certify the subject site, as being suitable for the correct intended use (i.e. Institutional Use). The following conditions of approval are provided: copies of final ESA reports supporting the RSC must be provided to the City; and that a Record of Site Condition (RSC) must be filed in the Ministry's Environmental Registry, prior to the issuance of a building permit.

Allowing the proposed day nursery to operate within the existing heritage property will not conflict with the surrounding site context or the overall function of the building. Staff do not anticipate negative on-site or off-site impacts to be generated by the proposed use. Subject to the recommended conditions of approval, the requested variances are desirable for the appropriate development of the land.

4. Minor in Nature

The Minor Variance application is to permit a Day Nursery is not anticipated to create any negative impact on the use of either the subject property or the surrounding properties. Subject to the recommended conditions, the variance is deemed minor in nature.

Respectfully Submitted,

Megan Fernandes

Megan Fernandes, Planning Technician



Attachment
B

Planning and Development Services Committee of Adjustment

If this information is required in an alternate accessible format, please contact the Accessibility Coordinator at 905-623-3379 ext. 2131.

Date of Meeting: August 12, 2021

File Number: A2021-0029

Address: 415 Baseline Road West, Bowmanville

Report Subject: An application to permit a Day Nursery within the existing commercial building.

Recommendations:

1. That the Report for Minor Variance A2021-0029, be received;
2. That all written comments and verbal submissions were considered in the deliberation of this application;
3. That application A2021-0029 for a minor variance to Section 20.1 b. of Zoning By-law 84-63 by permitting a Day Nursery within the existing commercial building be **approved** as it is minor in nature, desirable for the appropriate development or use of the land and maintains the general intent and purpose of the Zoning By-law, the Durham Region Official Plan and Clarington Official Plan; and
4. That all interested parties listed in this report be forwarded a copy of Committee's decision.

1. Application Details

- 1.1 Owner/Applicant: Ludwig Fischer
- 1.2 Agent: Ryan Eickmeier (Helping Hands Daycare)
- 1.3 Proposal: A minor variance to Section 20.1 b. of Zoning By-law 84-63 by permitting a Day Nursery within the existing commercial building
- 1.4 Area of Lot: 1.2 hectares
- 1.5 Location: 415 Baseline Road West, First Floor
- 1.6 Zoning: "(H)C5 – Special Purpose Commercial Zone" of Zoning By-law 84-63
- 1.7 Clarington Official
Plan Designation: Gateway Commercial
- 1.8 Durham Region
Official Plan
Designation: Living Areas
- 1.9 Heritage Status: None

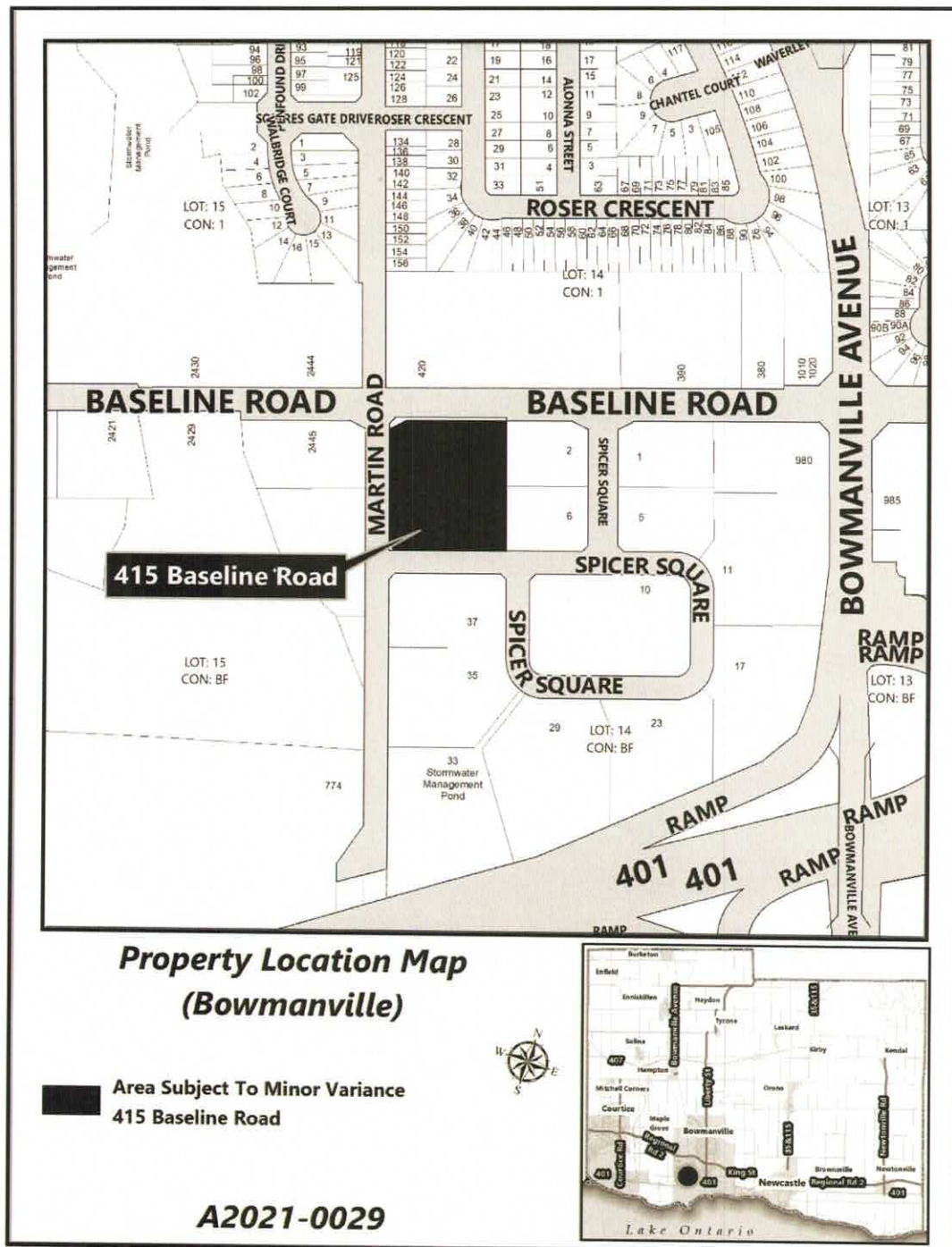


Figure 1 - Location Map

2. Background

- 2.1 The subject application proposes a new use on the subject lands. Typically, the addition of uses is achieved through a Zoning By-law Amendment and in limited circumstances can be contemplated by the Committee of Adjustment through a minor variance application. These decisions have been tested by case law and previous decisions by the Ontario Municipal Board (now the Ontario Land Tribunal).
- 2.2 Under these specific circumstances requesting relief from the Committee of Adjustment can be considered appropriate:
- The proposed daycare use is proposed in a portion of a building used for former institutional/public uses and presently office space;
 - The more rigorous rezoning process would result in added time and costs without impacting staff recommendation – further it is anticipated that upon approval of the new Zoning By-law, daycare uses will be permitted in accordance with the Clarington Official Plan;
 - The use is not a significant deviation from existing and previous uses in the building, nor existing permitted uses under the C5 and C4 Zones;
 - The use of the building for a daycare supports and promotes small business which is a key objective of the Municipality;
 - There is little risk for setting a precedent as in order to set a precedent the facts would have to be exact; and
 - The application can satisfy the four tests as provided in the balance of the report below.
- 2.3 The (H) Holding provision on the subject property has been in place since the adoption of Zoning By-law 84-63 in 1984.
- 2.4 On December 17, 1992, GenerX Inc. and Ellis-Don Design Build Inc. entered into a development agreement with the Corporation of the Town of Newcastle to permit the development of the Royal Canadian Mounted Police Bowmanville Detachment Building. The (H) Holding Symbol was not removed at this time because the proposed building was a "Public Use" under Zoning By-law 84-63. Public Uses are not bound by the regulations of the Zoning By-law.
- 2.5 The building was occupied by the Bowmanville detachment of the Canadian Mounted Police (RCMP) until June 2018.

- 2.6 In October 2017, Strategic Property Management on behalf of Ludwig Fischer submitted ZBA2017-0034 for the removal of the (H) Holding Symbol on the subject lands. On January 15, 2018, Council approved the Application to remove the (H) Holding Symbol, subject to the execution of an amending site plan agreement which included the transfers of road widening and sight triangles.
- 2.7 In October 2018, a site plan was submitted; it was approved in January 2019. The execution of the site plan and land transfers were completed in September 2019. As a result of a clerical oversight, the Holding symbol was not removed at that time.
- 2.8 The by-law to remove the Holding symbol from this property will be forwarded to Council in September 2021.



Figure 2 - Road widening and sight triangles for the removal of the (H) Holding Symbol.

- 2.9 Just over half of the existing building is currently occupied by office space including the CIMA offices, a local engineering firm.
- 2.10 This proposal is seeking the permission for a daycare on the first floor.
- 2.11 If permitted, the applicant would make suitable renovations to the building and property to accommodate the daycare use including a fenced playground on the west side of the building and a new entrance from the building to this play area.



Figure 4 - View of 415 Baseline Rd W looking southwest.



Figure 4 - West side yard where the new fenced playground will be located.

3. Land Characteristics and Surrounding Uses

- 3.1 The subject property is located at the southeast corner of Baseline Road West and Martin Road. The property has an approximate lot area of 1.2 hectares. There is a 3,249 square metre, two-storey commercial building on the property. There are two access points to the property from Baseline Road West. There are 130 parking spaces and 2 loading spaces. The existing and continued use of the property is commercial.
- 3.2 The surrounding uses are as follows:
- North – Trucking/Logistics
 - South – Hotel
 - East – Quick Service Restaurant
 - West – Commercial Plaza

4. Public Notice and Submissions

- 4.1 The required signage for this application was installed on the property and the appropriate notice was mailed to each landowner within 60 metres.
- 4.2 At the time of writing this report, Staff received no inquiries regarding this application.

5. Departmental Comments

- 5.1 The Infrastructure Division of Public Works has no objection.
- 5.2 The Building Division of Planning and Development Services has no objection.
- 5.3 Clarington Emergency and Fire Services Department has no objection.

6. Discussion

Conformity with the intent and purpose of the Regional and Clarington Official Plans

- 6.1 The subject property is within the "Living Areas" designation of the Durham Regional Official Plan. Living Areas are used predominantly for housing and its compatible uses which may include limited office development and limited retailing of goods and services in appropriate locations.
- 6.2 The Clarington Official Plan was updated in 2018. Within the updated Clarington Official Plan, the subject property is designated "Gateway Commercial". Gateway Commercial areas are intended to serve the specialized needs of residents as well as attract tourists and visitors to the Municipality. Community facilities, such as daycares, are permitted within this designation.
- 6.3 For the above stated reasons, it is Staff's opinion that the application conforms to the intent and purpose of both Official Plans.

Conformity with the intent and purpose of the Zoning by-law

- 6.4 Zoning By-law 84-63 has been in place since 1984 and does not fully implement the Clarington Official Plan. Within the Zoning By-law 84-63, the subject property is zoned "Special Purpose Commercial (C5)".
- 6.5 The "C5" zone currently permits a variety of retail and service uses. These land uses are intended to offer specialized products and services for both local residents as well as shoppers from beyond the local community. It is anticipated that businesses with this zone will be located in areas where they may benefit from highway access due to commuting patterns and/or the distances travelled by their customers.
- 6.6 This application is requesting that a Day Nursery (daycare) use be permitted on the subject property. A daycare is a community facility use that serves the specialized needs of residents.
- 6.7 The existing C5 zone does not reflect a full list of the community facilities uses that are already permitted within the Official Plan. For example, the C5 zone already permits places of worship and private clubs (buildings or lands used for social, cultural, athletic or recreational activities). This means that a private club, such as Joey's World Family Indoor Playground would be permitted within this zone.

- 6.8 It is Staff's opinion that the application conforms to the intent and purpose of the Zoning By-law.

Desirable for the appropriate development or use of the land, building or structure

- 6.9 The location is well suited for a daycare due to its proximity to residential neighbourhoods, employment areas, and commuting routes to Highway 401.
- 6.10 The large building and property easily accommodate the needs of a daycare including the Ministry requirement for an outdoor play area.
- 6.11 Since the departure of the RCMP in June 2018, this property has been available for lease. Currently the building has only achieved 53% occupancy. Expanding the list of permitted uses to include a daycare will increase the marketability of this site and will assist in attracting prospective tenants.
- 6.12 The proposed tenant, Helping Hands Daycare, is not presently operating in the Bowmanville market. Expanding the number of available childcare spaces in the community promotes economic development through job creation and serves an ever-growing community need.
- 6.13 For the above stated reasons, it is Staff's opinion that the minor variance requested is desirable for the appropriate development or use of the subject property.

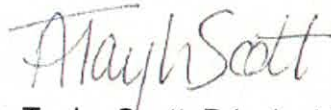
Minor in Nature

- 6.14 One of the challenges for daycares can be traffic impacts generated during peak drop-off and pick-up periods in the morning and late afternoon. Because of the size of the site, the amount of on-site parking, and the multiple access points, no negative traffic impacts are expected.
- 6.15 The property is of sufficient size and layout such that the proposed daycare will not impact upon or be impacted by the operation of the neighbouring and nearby properties.
- 6.16 The proposed daycare use will integrate well into the existing commercial building and property. The added use maintains the intent of the property being used for commercial purposes.
- 6.17 Planning Staff received no adverse comments from internal departments, agencies nor the public.
- 6.18 For the above stated reasons, it is Staff's opinion that the proposed daycare use is minor in nature.

7. Conclusion

- 7.1 Based on Staff's review, the application conforms to the intent and purpose of the Zoning By-law and the Regional and Municipal Official Plans, is desirable for the appropriate development or use of land and is deemed to be minor in nature.
- 7.2 Given the above comments Staff recommends **approving** this application for a minor variance to permit the use of a day nursery on the subject property located in the Special Purpose Commercial (C5) Zone.

Submitted by:



Anne Taylor Scott, Principal Planner
Development Review Branch

Staff Contact: Nikita Jariwala, Paul Wirch

Interested Parties:

The following interested parties will be notified of Committee's decision:

Ludwig Fischer
Ryan Eickmeier