

Committee of Adjustment Comments from Staff, Public and Agencies



Application Details

Application Number:	A-82/23
Location:	101 Beverley Street
Hearing Date:	December 14, 2023
Owner:	Craig Dool
Agent:	Chris Lahn, Tacoma Engineers Inc.
Official Plan Designation:	Mixed Business
Zoning Designation (1995)-14864:	Industrial (B.4) Zone
Zoning Designation (2023)-20790:	Mixed Business (MB) Zone

Zoning By-Law (1995)-14864 Requirements:

The property is located in the Industrial (B.4) Zone. A variance from Table 7.3 Row 3 of Zoning By-law (1995)-14864, as amended, is being requested. The By-law requires a minimum exterior side yard setback of 6 metres. Zoning By-law (1995)-14864, as amended, permits a commercial entertainment use (excluding theatres, bowling alleys and roller rinks) in the B.4 Zone.

Zoning By-Law (2023)-20790 Requirements:

Variances from Table 10.3 and 10.1 of Zoning By-law (2023)-20790, as amended, are being requested. The By-law:

- a) requires a minimum exterior side yard setback of 6 metres; and
- b) permits a variety of uses in the MB Zone, but does not permit a commercial entertainment use

Request:

The applicant is seeking relief from the requirements of Zoning By-law (1995)-14864, as amended, to permit a minimum exterior side yard setback of 3 metres (facing Smith Avenue) for the proposed addition.

The applicant is also seeking relief from the requirements Zoning By-law (2023)-20790, as amended:

- a) to permit a minimum exterior side yard setback of 3 metres (facing Smith Avenue) for the proposed addition to the existing building; and
- b) to permit commercial entertainment as an additional permitted use on the subject property.

Staff Recommendation

Approval with Condition of Variance a); Refusal of Variance b)

Recommended Conditions

Planning Services

1. That a Tree Inventory & Preservation Plan, undertaken by a qualified arborist, in accordance with the requirements of the City's Tree Technical Manual will be required prior to any works on site or development approvals (ie. Site Plan) to the satisfaction of the General Manager of Planning/Building Services.
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Comments

Planning Services

This application proposes an addition to the existing building on site to allow for the enlargement of an existing commercial entertainment use. To facilitate this proposal, the applicant has requested a variance from both the 1995 and 2023 Zoning By-laws to reduce the required exterior side yard setback from 6 metres to 3 metres, and have a requested a variance to the 2023 Zoning By-law to permit a commercial entertainment use as an additional permitted use on the subject property.

The subject property is designated "Mixed Business" in the City's Official Plan. The "Mixed Business" land use designation applies to employment lands where a mix of business uses can be provided. Permitted uses include:

- I. Uses permitted in the industrial designation;
- II. Office uses;
- III. Convenience Commercial uses; and
- IV. Institutional uses.

The Mixed Business land use designation permits certain convenience commercial uses that do not compete with other planned retail areas, but does not permit the proposed commercial entertainment use. As the proposed use is not permitted, staff are of the opinion that the proposal does not conform with the intent of the Official Plan.

Staff note that a legal non-conforming commercial entertainment use currently exists on the subject property, and have indicated to the applicant that staff could be supportive of an application to enlarge or extend an existing legal non-conforming use as that process does not have to comply with the standard four tests of a minor variance.

Due to the requirements for minor variance applications outlined in Section 45 of the Planning Act, the nature of the application's request cannot be altered without circulating a revised public meeting notice.

The property is zoned "Industrial" (B.4) in the 1995 Zoning By-law and "Mixed Business" (MB) in the 2023 Zoning By-law. Variances to both by-laws to reduce the minimum required exterior side yard setback, and a variance to the 2023 Zoning By-law to permit a commercial entertainment use are proposed.

Variance A

Variances from Table 7.3 Row 3 of the 1995 Zoning By-law, and from Table 10.3 in the 2023 Zoning By-law are required to reduce the minimum required exterior side yard setback from 6 metres to 3 metres. The intention of this required setback is to ensure that structures do not negatively impacts the streetscape of the street they abut to. In this case, the existing structure on the subject lands currently has a 1.09 metre setback to Smith Avenue. The proposed exterior side yard setback of 3 metres for the addition would improve upon the setback of the existing structure and would have a less significant impact on Smith Avenue and the surrounding properties than the existing structure. For this reason staff are satisfied that the proposed setback reduction conforms with the intent of both the 1995 and 2023 Zoning By-laws.

The proposed addition would improve the streetscape of the property compared to the existing barbed wire fence and outdoor storage area that currently occupy this portion of the property. The addition would also allow for more industrial, office, and commercial businesses to utilize the property, while improving upon the existing 1.09 metre exterior side yard setback. For this reason staff are satisfied that the variance to permit a reduced exterior side yard setback are desirable for the appropriate development of the property and are minor in nature.

Variance B

A variance to Table 10.1 of the 2023 Zoning By-law is proposed to permit a commercial entertainment use as a permitted use in the Mixed Business (MB) Zone. The Mixed Business Zone is intended to provide lands for Industrial, Office, and other employment uses in accordance with the Mixed Business Official Plan designation. The proposed commercial entertainment use is primarily commercial in nature, rather than being employment oriented. In the opinion of staff the use does not conform with the intent of the Mixed Business Zone's permitted uses, and permitting such a use is not minor in nature.

As previously mentioned, a legal non-conforming commercial entertainment use currently exists on the subject property. Staff have indicated to the applicant that an application to enlarge and expand the existing legal non-conforming use could be supported. However, an application to add the commercial entertainment use to the list of permitted uses in the Mixed Business zone cannot be supported by staff.

Staff recommend approval of both variances that request the reduction of the minimum required exterior side yard setback from 6 metres to 3 metres, and recommend refusal of the variance to permit a commercial entertainment use in the Mixed Business zone.

Should the Committee choose to approve the application staff note that the subject property is over 0.2 hectares (0.5 acres) in size and therefore regulated under the City's Private Tree By-law. In accordance with the City's Urban Forest Management Plan and City Urban Forest Policies within the Official Plan, proposed development should seek opportunities to retain existing trees. A Tree Inventory & Preservation Plan, undertaken by a qualified arborist, in accordance with the requirements of the City's Tree Technical Manual will be required prior to any works on site or development approvals (ie. Site Plan). Issuance of a Tree Permit by the City will be required prior to any works taking place on the subject property. Please be aware that where preservation is not possible, as agreed to by the City, compensation is required either in the form of Cash in lieu or Replacement Trees, or a combination of the two at the discretion of City staff.

Engineering Services

Engineering has reviewed this site through a Site Plan Pre-Consultation and will continue to review through a subsequent Site Plan submission.

We have no concerns with the requested variances. We agree with the recommendations made by Planning and Building staff.

Building Services

The property is zoned Industrial (B.4) under Zoning By-law (1995)-14864, as amended and Mixed Business (MB) under Council approved Comprehensive Zoning By-law (2023)-2079, as amended. An addition is proposed to the building with a 3 metre exterior side yard setback, whereas the required exterior side yard setback is 6 metres. Building has no concerns with the reduced setback and notes that a building permit is required prior to the demolition and construction, at which time requirements under the Ontario Building Code will be reviewed.

Building Services - Zoning agrees with Planning that an application to enlarge or extend an existing legal non-conforming use is appropriate to enlarge the existing commercial entertainment use. Commercial Entertainment is a permitted use under the 1995 ZBL within malls/multi-unit buildings, but is not a permitted use in the MB Zone of the 2023 CZBL. Therefore, the existing commercial entertainment use in the building becomes legal non-conforming under the 2023 CZBL.

Comments from the Public

None

Contact Information

Committee of Adjustment: City Hall, 1 Carden Street, Guelph ON N1H 3A1
519-822-1260 Extension 2524 TTY: 519-826-9771

cofa@guelph.ca

guelph.ca/cofa