



**COMMITTEE OF ADJUSTMENT
MINUTES**

The Committee of Adjustment for the City of Guelph held a Special Meeting on Thursday December 17, 2015 at 4:00 p.m. in Council Chambers, City Hall, with the following members present:

B. Birdsell, Chair (until 4:11 p.m.)
K. Ash, Vice-Chair
M. Bosch
S. Dykstra (until 4:11 p.m.)
L. Janis
D. Kendrick
P. Ross

Regrets: None

Staff Present: T. Donegani, Planner
T. Di Lullo, Secretary-Treasurer
V. Sobering, Council Committee Assistant

Declarations of Pecuniary Interest

Chair B. Birdsell declared an interest with application A-100/15 as he is the agent for this application. Committee member S. Dykstra declared an interest with application A-100/15 as it involves a friend.

Approval of Minutes

Moved by D. Kendrick
Seconded by M. Bosch

THAT the Minutes from the December 10, 2015 Regular Meeting of the Committee of Adjustment, be approved as circulated.

CARRIED

Application: A-106/15
Owner: 2218604 Ontario Ltd.
Agent: Astrid Clos, Astrid J. Clos Planning Consultants
Location: 731 Woolwich Street
In Attendance: Astrid Clos
Murray Taylor
Marco Del Rosario

Secretary-Treasurer T. Di Lullo noted that correspondence was received after the comment deadline from Ms. L. Olsen-Kent and Ms. K. Anderson from Fleuristic, Garden and Flower Studio; Adonia Greek Restaurant; Mr. R. Bartle from Tim Hortons; Mr. R. Eilers from Vesterra Property Management Inc., and Mr. P. Taylor from Woodlawn Memorial Park in support of the application. Copies of the correspondence were provided to the Committee members.

Chair B. Birdsell questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received. Ms. A. Clos, agent for the owner, replied that the sign was posted and comments were received.

Ms. A. Clos provided background information on the application and indicated that the owner is in agreement with the proposed conditions.

In response to a question from Committee member S. Dykstra, Secretary-Treasurer T. Di Lullo confirmed that the use requested was a retail establishment as an additional permitted use. Planner T. Donegani clarified that one of the recommended conditions will limit retail sales to clothing sales.

No members of the public spoke in support or opposition of the application.

Having considered whether or not the variance(s) requested are minor and desirable for the appropriate development and use of the land and that the general intent and purpose of the Zoning By-law and the Official Plan will be maintained, and that this application has met the requirements of Section 45(1) of the Planning Act, R.S.O. 1990, Chapter P.13 as amended,

Moved by S. Dykstra
Seconded by M. Bosch

THAT in the matter of an application under Section 45(1) of the Planning Act, R.S.O. 1990, c.P13, as amended, a variance from the requirements of Section 6.4.3.1.16.1 of Zoning By-law (1995)-14864, as amended, for 731 Woolwich Street, to permit a retail establishment as an additional permitted use, when the By-law permits a bake shop, restaurant, or restaurant (take-out) use, but does not permit a retail establishment, be **APPROVED**, subject to the following conditions:

1. That the use be restricted to retail sales of clothing.
2. That the use be restricted 169 square metres of floor area.
3. That the use only be established within the building that existed on site on the day the requested variance came into effect.

REASONS:

This application is approved, as it is the opinion of the Committee that, with the above noted conditions of approval, this application meets all four tests under Section 45(1) of the Planning Act.

CARRIED

Chair B. Birdsell and Committee member S. Dykstra left the hearing at 4:11 p.m. Vice-Chair K. Ash assumed the role of the Chair.

Application: A-100/15

Owner: Nikan Inc.

Agent: B. Birdsell, J. William Birdsell Architect

Location: 28-36 Essex Street

In Attendance: Thomas Gofton
Faz Ashkar
Evelyn Lilly
Paul Zoeller
Geoffrey Ellis
Ron Hallman
Nicki Hettinga
Peter Hettinga
Crystal Timmings
Al Pica
Dylan McMahon
Dean Martin

Secretary-Treasurer T. Di Lullo noted that correspondence was received after the comment deadline from Mr. A. Murch and Mr. J. Farley from Market Commons Commercial, indicating support for the application. Copies of the correspondence were provided to the Committee members.

Secretary-Treasurer T. Di Lullo noted that this application involved both a minor variance request and a request to change legal non-conforming use. She indicated that the test to be applied for the use request was not the four tests for minor variances but rather whether the change in use is similar in purpose to the one previous or is more compatible in purpose. She noted that the Committee will need to provide reasoning in regards to compatibility and the four tests when making a decision.

Vice Chair K. Ash questioned if the sign had been posted in accordance with Planning Act requirements and if the staff comments were received. Mr. T. Gofton, business owner, replied that the sign was posted and comments were received. Mr. T. Gofton provided an overview of the application.

Committee member M. Bosch noted that the he was considering the application as if the existing game café use was not present.

Upon the request of Vice-Chair K. Ash, Planner T. Donegani provided background on the application since the last time the application appeared before the Committee.

In response to questions from Committee member M. Bosch, Planner T. Donegani clarified the difference in definitions between a restaurant and tavern, and clarified that if the application is approved, the permitted uses on site would be a commercial school, an office, two residential units above, and a board game café. He further indicated that if there is a

desire to establish a restaurant or tavern or any other type of use, approval from the Committee would be required.

In response to a question from Committee member M. Bosch, Secretary-Treasurer T. Di Lullo outlined past decisions regarding parking for this property. Planner T. Donegani noted that the difference in required parking between File A-103/14 and the current application is 10 parking spaces.

In response to questions from Committee member M. Bosch, Mr. T. Gofton noted that the office area will be used for a photography/film studio and to design board games. He indicated that the original partition wall was so that customers could visit the washroom without walking through the studio. He indicated that he no plans to enlarge the area of the game board café, and planned to close the café by 11:00 p.m., but let patrons finish their games past this time if needed.

In response to a question from Committee member P. Ross, Mr. T. Gofton indicated that he would accept a café closure time of 11:00 p.m.

Committee member P. Ross indicated that he felt the application met the four tests, was an appropriate use for the property, and was compatible with the previous uses, Official Plan, and Downtown Secondary Plan. He noted that a previous application for a board game café use was approved without any parking requirements and that this application should be treated like any other application in the downtown area. He noted that the application involves a limited number of patrons and that there is a variety of parking within a 5 minute walk.

In response to a question from Vice-Chair K. Ash, Planner T. Donegani responded that the board game café definition does not exist in the current Zoning By-law and will be a site-specific definition. She stated she was concerned that a use may be permitted that does not exist in the Zoning By-law and would like to see the definition included as a condition.

Ms. N. Hettinga, owner of 41 Nottingham Street and employee at 42 Essex Street, presented concerns that if approved a precedent would be set, but indicated that the recommended conditions will provide safeguards so that the proposal will not become a tavern. She indicated that she supported the application with the recommended conditions. She asked that the Committee consider notifying the Alcohol and Gaming Commission of Ontario (AGCO) about the closing time restriction.

Mr. T. Gofton responded that since the last application to the Committee, he has had a chance to meet and discuss the application with the neighbours.

Mr. P. Hettinga, read a letter on behalf of Ms. P. Fielding who could not attend. A copy of the letter was provided to the Committee members. The letter stated concerns about a possible tavern in the future and potential noise as there has been loud concerts and parties at the subject property in the past.

In response to a question from Committee member, Planner T. Donegani responded that the board game café definition is a more limited version of the general restaurant use and requires that the primary purpose remain the playing of board games by customers, but would allow the serving of food and alcohol. He clarified that a restaurant that is proposed without the board game component would need future approval from the Committee.

Mr. T. Gofton noted that the noisy concerts mentioned in the comments from Ms. P. Fielding occurred prior to him using the property and that he does not want that type of disturbance.

Mr. P. Hettinga, owner of 42/44 Essex Street, indicated he would support the application if specific restrictions regarding seating capacity, hours of operation, and a prohibition on a patio are put in place. He asked that the Committee forward these restrictions to the AGCO.

Mr. D. Martin, present on behalf of the Round Table, acknowledged issues with rowdiness downtown and indicated that the overuse of alcohol would prohibit the enjoyment of board games. He indicated that he often carools downtown and many patrons will travel to the board game café as a group.

Committee member M. Bosch recommended that three additional conditions be added to the approval of the application. The first proposed additional condition required the board game café to close by 12:01 a.m. Committee member P. Ross, who moved approval of the application subject to the conditions recommended by staff, was in agreement with this additional condition. The second proposed additional condition required that the permitted use only be for a board game café and office. Committee member P. Ross was not in agreement with this additional condition as he believed staff had addressed possible future uses. Planner T. Donegani expressed concern about adding this condition as possible future uses will require separate approval from the Committee. The third proposed additional condition limited the area of the office and board game café uses. Committee member P. Ross was in agreement with this additional condition. Mr. T. Gofton indicated he was in agreement with all the proposed additional conditions.

Vice-Chair K. Ash recommended that the board game café definition be added as a condition to prevent any future confusion about the permitted use. Committee member P. Ross indicated he was in agreement with this additional condition. Mr. T. Gofton indicated he was in agreement with the proposed additional condition.

In response to a question from Committee member D. Kendrick, Planner T. Donegani replied that he had no concerns with adding the board game café definition as a condition.

Having considered whether or not the variance(s) requested are minor and desirable for the appropriate development and use of the land and that the general intent and purpose of the Zoning By-law and the Official Plan will be maintained, and that this application has met the requirements of Section 45(1) of the Planning Act, R.S.O. 1990, Chapter P.13 as amended,

Moved by P. Ross
Seconded by L. Janis

THAT in the matter of an application under Section 45(2)(a)(ii) of the Planning Act, R.S.O. 1990, c.P13, as amended, permission to change the existing legal non-conforming use at 28-36 Essex Street, to allow for a board game café use and office use with the existing commercial school use and existing two (2) residential units; and

THAT in the matter of an application under Section 45(1) of the Planning Act, R.S.O. 1990, c.P13, as amended, a variance from the requirements of Section 4.13.4.2 of Zoning By-law (1995)-14864, as amended, for 28-36 Essex Street, to permit nine (9) off-street parking spaces for the board game café, commercial school, office use and two (2) residential units, when the By-law requires that a restaurant use provide

one (1) parking space per 7.5 square metres of gross floor area, a commercial school provide 1 parking space per 2 staff members plus 1 parking space, and an office provide 1 parking space per 33 square metres of gross floor area, and an apartment unit provide 1 parking space [total of 39 parking spaces required], be **APPROVED**, subject to the following conditions:

1. That the proposed parking spaces be demarcated prior to the issuance of any building permit.
2. That two of these spaces be exclusively devoted to the residential uses on site and signed accordingly.
3. That a maximum of two (2) employees of the commercial school use be permitted on site at any time.
4. That a maximum of three (3) employees of the office use be permitted on site at any time.
5. That no Patio be permitted in association with the board game café.
6. That alcohol not be sold after 12:01 a.m.
7. That the board game café not operate after 12:01 a.m.
8. That the area for the office remain at 395 square metres and that the area for the board game café remain at 112 square metres.
9. That a board game café be defined as: "a building or place, including a restaurant, which is primarily designed and used for the playing of board games by the public, and this definition does not include a gaming establishment, public hall, or tavern".

REASONS:

This application is approved, as it is the opinion of the Committee that, with the above noted conditions of approval, this application meets all four tests under Section 45(1) of the Planning Act, is compatible with other existing uses, and conforms with the policies of the Official Plan and Downtown Secondary Plan.

CARRIED

Other Business

Secretary-Treasurer T. Di Lullo advised that an Ontario Municipal Board appeal was received on December 15, 2015 regarding the Committee's refusal of files B-24/15 and A-98/15 for 67 Arkell Road.

Secretary-Treasurer T. Di Lullo reminded the Committee members that the Chair and Vice-Chair positions are elected annually and this election will take place at the next hearing on January 14, 2016.

Adjournment

Moved by D. Kendrick
Seconded by M. Bosch

THAT the hearing of the Committee of Adjustment be adjourned at 4:59 p.m.

K. Ash
Vice-Chair

T. Di Lullo
Secretary-Treasurer