Clerk's Files



Corporate Report

Originator's Files

'A' 040/13 W2

PDC MAR 18 2013

DATE:	February 26, 2013		
TO:	Chair and Members of Planning and Development Committee Meeting Date: March 18, 2013		
FROM:	Edward R. Sajecki Commissioner of Planning and Building		
SUBJECT:	Appeal to the Ontario Municipal Board Committee of Adjustment Decision Minor Variance Application 'A' 040/13 W2 Darval Holdings 2213 North Sheridan Way North of Queen Elizabeth Way and west of Erin Mills Parkway Ward 2		
RECOMMENDATION:	That the Report dated February 26, 2013 from the Commissioner of Planning and Building regarding the appeal filed by Legal Services by letter be adopted, and that Legal Services, together with other appropriate City staff attend the Ontario Municipal Board hearing in support of the appeal of the decision of the Committee of Adjustment under file 'A' 040/13 W2.		
REPORT HIGHLIGHTS:	 Minor variance application 'A' 040/13 W2 was approved by the Committee of Adjustment on January 31, 2013. The Planning and Building Department recommended that the application be refused since it does not maintain the intent of both the Official Plan and Zoning By-law, is not an appropriate or desirable use within the Sheridan Park Corporate Centre, and is not minor in nature. A "Placeholder" appeal has been filed by Legal Services as this decision would set an undesirable precedent with respect to the 		

	interpretation of the Official Plan and Zoning By-law in the context of future Committee of Adjustment matters being considered by the City.
BACKGROUND:	On January 31, 2013, the Committee of Adjustment considered minor variance application 'A' 040/13 W2, to permit ancillary uses for the proposed research facility known as "Reptilia", whereas By-law 0225-2007, as amended, makes no provisions for ancillary uses to a research facility in this instance.
	The minor variance was amended by the authorized agent at the Committee of Adjustment hearing to permit a reptile zoo with associated retail sales and children's party area operated in conjunction with a reptile research facility known as "Reptilia", whereas By-law 0225-2007, as amended, makes no provisions for such a use. In addition, a parking variance was also granted to allow a reduced parking rate for the proposed use on the subject property. Page 6 of this report summarizes the decision of the Committee of Adjustment and amended variance request. Appendix 1 is a copy of the signed decision.
	The application was approved, as amended by the Committee, on January 31, 2013.
	A "Placeholder" appeal was submitted on February 25, 2013 by Legal Services. The purpose of this report is to seek direction on this matter.
	Background information is provided in Appendices 1 to 9.
COMMENTS:	The applicant's authorized agent attended the Committee of Adjustment meeting on January 31, 2013 to present the application. He indicated that the purpose of the proposal was to permit the operation of a research and education facility with ancillary zoo and retail components. Based on the floor plans submitted with the Committee of Adjustment application (Appendix 7), the area identified as "Animals for Education and Research" is the public exhibit/zoo area, the "Supplies, Ed

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Materials and Gift Shop" is the retail store, and the "Classrooms" may also be used for birthday parties amongst other uses.

The authorized agent suggested that the primary function of the operation is for reptile research and education for school children and that these uses would be compatible with the existing land use designation for the subject property in Mississauga Official Plan.

The Planning and Building Department's principle concerns with the proposal are as follows:

- 1. We are not satisfied that the principle use of this building is a research facility (science and technology facility).
- 2. That the types of "accessory uses" being requested are not considered accessory to the research facility. Through discussions with the applicant and based on the floor plans (Appendix 7) submitted with the minor variance application, the "accessory uses" are described as retail sales, classrooms for education and research, and a lab and medical area. As the primary use, a reptile zoo, is not permitted, these uses cannot be considered as accessory to the primary use.

While a letter was initially submitted by the Sheridan Park Association (SPA) in support of the proposal, upon further review of the proposed facility, a subsquent letter (Appendix 9) was submitted noting their opposition to the proposal.

The Planning and Building Department recommended that the minor variance application be refused on the basis that it does not maintain the general intent and purpose of the Official Plan and the Zoning By-Law, is not minor in nature, and is not desirable for the appropriate development of the land.

Official Plan

The subject property is designated "Business Employment" in the Sheridan Park Corporate Centre in Mississauga Official Plan, which allows for facilities involved with scientific and engineering

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research and development, education and training facilities but excludes elementary or secondary level education, data processing centres, engineering services, offices associated with science and technology uses, hotels, and accessory commercial uses. The Sheridan Park Corporate Centre has unique policies to protect these lands as a research park, and to differentiate the Park from other Corporate Centres in the City of Mississauga.

A reptile zoo with associated retail sales and a children's party area operated in conjunction with reptile research, are not permitted uses within the Sheridan Park Corporate Centre. Furthermore, an indoor or outdoor zoo and associated uses are not recognized as uses in the Official Plan for the entire City. Therefore, the proposed uses do not maintain the general intent and purpose of the Official Plan.

Zoning By-law

The subject property is zoned "E2-6" (Employment). The applicable zone provisions permit a variety of business activities including office, commercial uses, science and technology facilities, education and training facilities, wholesaling/ warehousing, hospitality associated uses, and other uses.

Through discussions with the operator of the proposed facility, the business was described to City staff as a zoo/public exhibit use with accessory retail sales. The zoo/public exhibit would include field trips for school children during weekdays and the general public on weekends. While the information being provided from such activities at the proposed facility is both informative and educational, this use does not fall under the Zoning By-law definition of an "Education and Training Facility", where specialized instruction is provided for a particular skill or profession and may include a "Science and Technology Facility". The children/adults are being entertained and learning general information about the reptiles in the subject building. The term, "accessory to a research establishment", would typically include but not be limited to a cafeteria, a fitness area and/or offices, and

would have floor area restrictions that are less than the principal research establishment use.

Although Planning staff do not question that some research may occur on site, and that there is an educational component to the business, the educational component does not comply with the Zoning By-law definition for an Education and Training Facility.

A reptile zoo with associated retail sales and a children's party area operated in conjunction with reptile research is not a permitted use. Therefore, the requested use on the subject property does not maintain the general intent and purpose of the Zoning By-law.

Four Tests of a Minor Variance

An application for a minor variance from a Zoning By-law must meet all four tests established under the *Planning Act*, namely, the application must: maintain the general intent and purpose of the Official Plan; maintain the general intent and purpose of the Zoning By-law; be desirable for the appropriate development or use of the land; and be minor in nature. Failure to satisfy just one of these tests is fatal to the application.

As a zoo of any sort is not a recognized use in the City's Official Plan or Zoning By-law, these tests cannot possibly be met, regardless of whether it is ancillary or accessory to a research facility. The proposed use fails two of the four tests and by virtue of this cannot be considered minor or desirable, and therefore, fails the *Planning Act* requirements.

Parking Variance

In addition to the land use related concerns raised by Planning staff, the applicant was also granted relief from the parking requirement for the subject property. A Parking Study to justify the significantly reduced parking standard of 70% less than what is required, was not submitted. Based on the Gross Floor Area (GFA) of the existing building, the relief from the parking would be from 200 to 59 spaces. Based on the site plan submitted to the Zoning Section through the Certificate of Occupancy application, there are currently only 50 parking spaces available on-site, with no parking spaces for people with disabilities.

Committee of Adjustment Decision

The Committee of Adjustment considered the submissions put forward and was satisfied that the amended request met the general intent and purpose of the Zoning By-law and Official Plan in this instance, and was of the opinion that the amended request was minor in nature. The Committee approved a reptile zoo with associated retail sales and children's party area, operated in conjunction with a reptile research facility known as "Reptilia"; and to permit parking for the subject use at a rate of 1.6 spaces per 100 m² (1,076 sq. ft.) Gross Floor Area (GFA) - Non-Residential, whereas By-law 0225-2007, as amended, makes no provisions for such a use and requires parking at a rate of 5.4 spaces per 100 m² (1,076 sq. ft.) GFA - Non-Residential.

Ontario Municipal Board Appeal

The Committee of Adjustment's decision to approve the minor variance will be final and binding on February 27, 2013. Based on Council endorsed protocol, the Planning and Building Department prepares a Corporate Report to the Planning and Development Committee recommending that the City appeal a decision of the Committee of Adjustment, when in the Department's opinion, the decision does not maintain the general intent and purpose of the Official Plan. Accordingly, the Planning and Building Department requested that Legal Services prepare the appropriate Notice of Appeal to the Ontario Municipal Board (OMB) and file a "Placeholder" appeal prior to the appeal period expiring pending further instruction from Council.

CONCLUSION:	The minor variance approved by the Committee of Adjustment under file 'A' 040/13 W2, does not maintain the general intent and purpose of the Official Plan or the Zoning By-law, is not minor in nature and is not desirable for the appropriate use of the land.		
ATTACHMENTS:	Appendix 2: Appendix 3: Appendix 4:	Committee of Adjustment Decision 'A' 040/13 W2 Land Use Map Zoning Map General Context Map Aerial Photograph	
	Appendix 6: Appendix 7: Appendix 8:	Reference Plan Floor Plan	

Edward R. Sajecki Commissioner of Planning and Building

Prepared By: Lauren Eramo-Russo, Committee of Adjustment Planner

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COMMITTEE OF ADJUSTMENT

IN THE MATTER OF SECTION 45(1) OR (2) of The Planning Act R.S.O. 1990, c.P.13, as amended - and -IN THE MATTER OF ZONING BY-LAW 0225-2007 as amended - and -IN THE MATTER OF AN APPLICATION BY

DARVAL HOLDINGS LTD

on Thursday January 31, 2013

Darval Holdings Ltd. is the owner of Part of Lot 32, Concession 1, SDS, located and known as 2213 North Sheridan Way, zoned E2-6, Employment. The applicant requests the Committee to authorize a minor variance to permit ancillary uses for the proposed research facility known as "Reptilia"; whereas By-law 0225-2007, as amended, makes no provisions for ancillary uses to a research facility in this instance.

Mr. G. Broll, authorized agent, attended and presented the application to permit the operation of a research and education facility with ancillary zoo and retail components. Mr. Broll advised the Committee that the building on the subject property had been vacant for several years and was located within an area where research and development operations were common. Mr. Broll suggested that the primary function of the operation was for reptile research and education and was a compatible use within the intended land use designation indicated within the *Official Plan*. He noted that the Zoning By-law permitted science and technology uses including educational facilities and indicated that the proposed operation would conduct scientific research and have educational components.

Mr. Broil confirmed that no new development would occur on the property and that all changes would be internal to the building. It was Mr. Broil's opinion that the Zoning By-law did not have an appropriate parking standard to be applied to the proposed operation and that the Planning department suggested that 200 parking spaces were required. Mr. Broil stated that the parking lot would be rehabilitated and striped according to a previously approved Site Plan Application and suggested that the existing parking supply would be sufficient for the use.

Dr. A. Gno, an operator of the proposed facility, attended and explained the various functions of the proposed facility. Dr. Gno advised the Committee that the facility would serve as an expansion of a similar facility located in another municipality. He explained that this location would provide the necessary research and educational space required to conduct scientific research on various reptiles. Dr. Gno noted that some of the education that would be provided would be training to Environment Canada staff and various emergency service personnel. He noted that the facility would contain a zoo and retail component that would be ancillary to the primary research component. Dr. Gno confirmed that schools would be able to attend the site on an appointment basis and that smaller groups would be accommodated on a walk-in basis. He noted that these ancillary operations would partially subsidize the operational costs of the facility.

Mr. B. Childs, an operator of the proposed facility, attended and indicated the financial requirements of the proposed operation. Mr. Childs noted that the operational costs of the facility would be partially funded from government grants, educational research, zoo and retail components. He noted that the facility would allow for the development of domestic products associated with reptiles such as medical serums.

The Committee reviewed the information and plans submitted with the application.

The City of Mississauga Planning and Building Department commented as follows (January 30, 2013):

"1.0 RECOMMENDATION

The Planning and Building Department recommends that the application be refused.

2.0 BACKGROUND

Mississauga Official Plan

Character Area:Sheridan Park Corporate CentreDesignation:Business Employment

Zoning By-law 0225-2007

Zoning:

"E2-6", Employment

3.0 OTHER APPLICATIONS

Certificate of Occupancy File: C 13/3743

4.0 COMMENTS

We advise that the minor variance application, as requested, does not accurately reflect the proposed use. The proposed use would be more accurately described as a reptile zoo with associated retail sales and children's party area, operated in conjunction with reptile research. Such a use is not currently permitted in the E2-6 zone within Sheridan Park Corporate Centre, or anywhere within the City of Mississauga. Please refer to the attached maps that indicate where Reptilia is being proposed.

We note that Planning and Building staff together with Councillor Mullin recently visited the Vaughan location of Reptilla to gather an understanding of the proposed facility. Based on this visit, it was determined that the use does not fall under the definitions outlined within the Zoning By-law, and would be more suitable in a Commercial area.

Through our discussions with Brian Child, representative of Reptilia, the use at this location was described as a zoo/public exhibit use, with accessory retail sales. The zoo/public exhibit would include field trips for school children during the weekdays and the general public on weekends. While the information provided from such activities is both informative and educational, this use does not fall under the Zoning By-law definition of an Educational and Training Facility, where specialized instruction is provided for a particular skill or profession. The children/adults are being entertained and learning general information about the animals in the subject building.

Furthermore, the principal use at this location is not a Science and Technology Facility. The floor plan provided with the minor variance application shows that the "Lab and Medical Area" is very small compared to the other uses. The area identified as "Animals for Education and Research" is the public exhibit/zoo area, the "Supplies, Ed Materials and Gift Shop" is a retail store, and the "Classrooms" may also be used for birthday parties as well for school children to talk about specific animals during school fieldtrips, as is the case with the separate rooms at the Vaughan location.

The request through the Committee of Adjustment is for a minor variance to permit "ancillary uses for the proposed research facility known as "Reptillia". This Department has two significant concerns with this request:

1. We are not satisfied that the principal use of this building is a research facility (science and technology facility) and not a zoo and public exhibit facility, and;

2. That the types of "ancillary uses" being requested are not actually accessory to the research facility, so they must be specifically listed in the minor variance application. Without being specific to a file or project, "ancillary uses" to a research establishment would typically include but not be limited to a cafeteria, a fitness area and/or offices, and would have floor area restrictions which are less than the principal research establishment use.

The subject property is designated Business Employment in the Sheridan Park Corporate Centre which permits only facilities involved with scientific and engineering research and development, education and training facilities (excluding a public school or private school), data processing centres, engineering services, offices associated with science and technology uses, hotels and accessory commercial uses.

Our concerns, which have been relayed to the proponent, is that the principal use at this location does not maintain the intent of the Mississauga Official Plan Policies for the Sheridan Park Corporate Centre nor the Zoning By-law definition of an Educational and Training Facility or a Science and Technology Facility. In addition, we note that the objective and vision as set out in the work undertaken to date in connection with the Master Plan exercise for the Sheridan Park Corporate Centre is centred on re-inventing the Park as a viable world class state of the art Science and Technology Business Park.

In order to issue any permit for the proposed uses, they would need to be clearly identified in the Committee of Adjustment decision, as there can be no ambiguity as to what uses are being permitted by this variance.

In addition, we note that parking is required for the proposed use at the rate of 5.4 spaces per 100 m² (1076.42 sq. ft.) Gross Floor Area (GFA) – non-residential, requiring 200 parking spaces, based on a GFA of 3 695 m² (39,773.95 sq. ft.) (which has not, to date, been confirmed), and 6 parking spaces for people with disabilities (based on 200 parking spaces being required). From the information submitted with Certificate of Occupancy application (C 13/3743), approximately 50 parking spaces are available on site, with no parking spaces for persons with disabilities. The site plan submitted with Certificate of Occupancy application does not correctly reflect the current on-site parking layout. We advise that a Parking Utilization Study that satisfactorily justifies the requested reduction in parking is required and has not been submitted.

In view of the preceding, this Department is of the opinion that the proposal is not an appropriate or desirable use within the Sheridan Park Corporate Centre and does not meet the intent of the Official Plan and Zoning By-law, is not minor in nature, nor is it a desirable use of the land within the Sheridan Park Corporate Centre."

The City of Mississauga Transportation and Works Department commented as follows (January 24, 2013):

"Enclosed are a number of photos which depict the subject property."

A memorandum was received from Ward Councillor Mullin expressing her objection to the requested variances. It was Councillor Mullin's opinion that the proposed operation did not conform to the requirements of the *Official Plan* or Zoning By-law. She requested that the subject application be refused.

A letter was received from the Sheridan Park Association Indicating that they did not have an objection to the application.

Mr. D. Culham, an interested stakeholder, attended and spoke in support of the subject application. Mr. Culham was of the opinion that the proposed use was compatible with the surrounding area. He noted that the research and educational component would be valuable to the municipality.

Mr. M. Douglas, an interested stakeholder, altended and spoke in support of the subject application. Mr. Douglas advised the Committee that the Sheridan Park area was undergoing transition of the predominant uses within the area. He suggested that the proposed use was compatible with the changing land use demands of the area.

No other persons expressed any interest in the application.

Mr. Broll upon hearing the comments of the Committee and the Planning and Building Department, requested that the application be amended in accordance with their recommendations.

The Committee consented to the request and, after considering the submissions put forward by Messrs. Broll, Gno, Childs, Culham & Douglas and having reviewed the plans and comments received, is satisfied that the amended request is desirable for the appropriate further development of the subject property. The Committee Indicated that the applicant had confirmed that the predominant function of the operation would be for scientific research and educational purposes. They noted that the zoo and retail component would be a subordinate part of the business operation. The Committee noted that the Sheridan Park Corporate Centre was in a period of transition with changing land use demands and were of the opinion that the proposed operation contained sufficient research facilities to be compatible with the Official Plan and Zoning By-law requirements and a desirable use for the lands. The Committee further noted that the parking rate requested is appropriate in this instance with the principle function of the business being research and education.

The Committee is satisfied that the general intent and purpose of the Zoning By-law and the Official Plan will be maintained in this instance.

The Committee is of the opinion that the amended request is minor in nature in this instance.

CARRIED

Accordingly, the Committee resolves to authorize and grant the amended request to permit a reptile zoo with associated retail sales and children's party area, operated in conjunction with reptile research facility known as "Reptilia" and to permit parking for the subject use to be provided at a rate of 1.6 spaces per 100.00m² (1076.42 sq.ft.) Gross Floor Area (GFA) -Non-Residential; whereas By-law 0225-2007, as amended, makes no provisions for such a use and requires parking at a rate of 5.4 spaces per 100.00m² (1076.42 sq.ft.) Gross Floor Area (GFA) -Non-Residential in this instance.

MOVED BY: J. Robinson SECONDED BY: R. Bennett

Application Approved, as amended.

Dated at the City of Mississauga on February 7, 2013.

THIS DECISION IS SUBJECT TO APPEAL TO THE ONTARIO MUNICIPAL BOARD BY FILING WITH THE SECRETARY-TREASURER OF THE COMMITTEE OF ADJUSTMENT A WRITTEN NOTIFICATION, GIVING REASONS FOR THE APPEAL, ACCOMPANIED WITH THE PRESCRIBED FEE ON OR BEFORE FEBRUARY 27, 2013.

Date of mailing is February 11, 2013.

S. PATRIZIO (CHAIR)

R. BENNETT

DISSENTED

D. GEORGE

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ABSENT

I. THOMAS

L. DAHONICK

D. KENNEDY

J. ROBINSON

DISSENTED *

I certify this to be a true copy of the Committee's decision given on February 7, 2013.

DAVID L. MARTIN, SECRETARY-TREASURER

A copy of Section 45 of the Planning Act, as amended, is attached.

NOTES:

- A Development Charge may be payable prior to the issuance of a Bullding Permit.
- Further approvals from the City of Mississauga may be required i.e. a Building Permit, a Zoning Certificate, a License, etc.







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APPENDIX 8 SITE PLAN



Sheridan Park Association Sheridan Science and Technology Park

February 21, 2013

Marilyn Ball Director, Development and Design City of Mississauga Planning & Building Department 300 City Centre Drive, Mississauga, Ontario, Canada L5B 3C1

Subject: Reptilia Inc. Proposal

Dear Marilyn,

Upon further consideration based on a review of more recent information, the Board of Directors of the Sheridan Park Association would like to retract our position that we are not in opposition of the minor variance being was requested by Reptilia Inc. to the Committee of Adjustments Panel

As such, our position is that we are in opposition to the minor variance, as we now understand the intended use does not meet with the vision of the Sheridan Science and Technology Park.

In future, should the Sheridan Park Association by approached by a land developer regarding matters such as this, we will contact the City of Mississauga's Planning & Building Department prior to responding to ensure that we are aware of your position.

We apologize for any inconvenience that this has caused regarding this issue

Sincerely,

hicha Eter

President, Sheridan Park Association Administrative Office

RP/gs