

ADDENDUM

AGENDA ITEM

17

COMMITTEE OF ADJUSTMENT

From: Bart Kacki Luxy Nightclub
To: Vaughan Committee of Adjustment
Subject: Minor Variance Application A172/21
Date: August 31, 2021

To Whom It May Concern

I am writing you this letter to state my opposition to the Minor Variance Application A172/21. One of the municipal addresses that the applicant lists in the application is where my business is housed in: 60 Interchange Way. Lux Entertainment Inc, (operating as Luxy Nightclub), has a lease in place and the business is exercising their rights of the lease until March 31, 2023.

By-law requirement: 1. Open Storage is not a permitted use within the C10 – Corporate District Zone. [5.11 and 5.1.4]

Proposal: 1. The permit an Open Storage use on the lot (shipping containers)

This development and zoning change will significantly, negatively affect my business. I am relying upon 1994 *Assaraf v. Toronto (City) Comm. of Adj't.* 31 O.M.B.R. 257 which states that a minor variance is a special privilege. There should be a valid reason why the bylaw requirements cannot be met. It is not sufficient that variance would be convenient to an owner to justify its approval. This plaza was originally designed and zoned as a world class entertainment not for an open space and park. This area is Zoned C10 for a reason and the applicant's recent and ongoing demolition actions is continually changing the landscape of this shopping centre. I have a map attached to my lease agreement indicating how that plaza should look and how it should be kept. There is no mention of shipping containers to be taking up parking spots in my lease agreement. To be transparent, I do have an ongoing lawsuit against landlord at Ontario Superior Court of Justice regarding their actions with breaches of the lease. The approval of the open storage on the lot in the form of shipping containers will additionally have an adverse impact on surrounding lands, (including other buildings such as Dave & Busters, Ikea and GoodLife). Perhaps of considerable notice is the fact that the applicant has indicated that they will be 'reusing specific vacant commercial buildings and include the demolition of other vacant commercial buildings and associated surface parking lots.' The application includes my building, where I currently have an operational business and I have significant leasehold improvements. The application also lists that the shipping containers to be used as an 'outdoor activation space will animate an area of the VMC that is **currently vacant** and underutilized". This is a misleading statement made by the applicant. The area is **NOT** currently vacant. I am the last remaining tenant, and as such, what the applicant is proposing to do interferes with my free and quiet enjoyment of my property. The request of the applicant to 'transform the large amounts of existing surface parking into landscaped features' additionally eliminates significant parking spots for my patrons. My building's square footage is 13,379 square feet as listed on the application. This which allocates 669 required parking spots for my patrons. If these shipping containers are there, where would my patrons be parking? There is no available parking for them if the shipping containers are approved to be stored there. To reiterate, the approval to permit open storage not only is a contravention of by-law 1-88 within the C-10 zoning, and there is a reason for this, the current zoning does not allow for it! The approval of such of a parking lot allowing shipping containers to be brought in, unloaded, organized, and continually accessed, would significantly reduce the parking lot spots of my patrons that are allotted to me under my current lease agreement.

2. The maximum permitted building height is 15.0 metres. [5.1.5, Schedule A2]

2. The maximum proposed building height of the 'landmark structure' as described in the application is 23.5 metres

The applicant has applied to build height landmark structure which is **8.5 meters** more than by-law 1-88 permits within the C-10 zoning. This will negatively impact the building my business is housed in. The structure is massive, bulky, and mass, exceeds the by-law's height allowance. This will have negative impact of the traffic flow and will be unattractive for any potential clientele.

The original walkway and alley paths which were created in the original design of this plaza, included easy access and high visibility to all tenants. This will be eliminated completely, create a hazard for emergency and fire access routes, and my business will be blocked by the landmark structure. Access to my business already is challenging, the allowance of this variance will make access to my business further limited, (if not eliminated), which is unacceptable in fact and law. The

erection of this landmark structure takes away the views and visual enjoyment of open areas shared by the community as a whole and the negative impact of insensitive and obstructive overbuilding on greenery and openness is at stake. If this were to happen, my business's property would in effect be boxed in with the view greatly reduced, and our once sunny front and side exposures now in shadow. As well, shadowing is the result of overbuilding and an insensitive increase in mass, height, and bulk. There would be considerable loss of enjoyment of being on an outdoor patio if there is a massive object obstructing my patrons' ability to enjoy outdoor activities due to excessive shadowing. Perhaps a sun and shade study could be conducted?

I am additionally relying on 2001 *Toronto (City) v. Contact Real Estate Inc.*, (Sup. Ct.) which states requested variances would have an adverse impact on surrounding lands is extremely important in deciding whether the variances are in fact minor. It is clear by the plans submitted by the applicant, that the proposed variances will **NOT** be minor. As you see my building will be again completely isolated and left out, there is no significant improvements to my premises, in adherence with the landlord's plans with the rest of the property. Furthermore, **I was never advised nor communicated by landlords at any time about any plans and any application including the demolition of other buildings nor that my building will be demolished in the future too.** The application of this variance is a blatant example to overbuild beyond what is allowed.

Lastly, will my Vaughan business license and other vendor permits including liquor license be affected by the zoning change?

In conclusion, we disagree with the applicant's statement that applicant's minor variances meet the four test of a Minor Variance of S 45(1) of the *Planning Act*. I am taking the position that in fact, *both* variations are not 'minor' in nature and that they do not meet in fact meet the definition of 'minor in nature' criteria as outlined by the legal test. Both variances significantly negatively impact my business and surrounding businesses, (Ikea and Dave and Buster's). Furthermore, the application itself is incorrect and misleading where it states that the lands are vacant. As previously stated, the lands are NOT vacant. The proposal of facilitating these initiatives will be done at my business's expense. The Committee's approval of these variations will cause an additional hardship to my already struggling business. I am relying on the Committee of Adjustments to deny the application of these 'minor' variances.

1. Additionally, the requested maximum height is anything but desirable and NOT an appropriate use of the land especially since the land still houses a tenant that will be there until March 31, 2023. As per the drawings submitted by the applicant my business will be completely obstructed and blocked out from any plain sight. My patrons already have a challenging enough time getting to my location in dealing with the ongoing construction debris. The approval of developing a 'Temporary Activation Space' will DESTROY sightlines to my business.
2. Lastly, Vaughan's Official Plan is part of an overall Growth Management Strategy. My business is currently located in the Vaughan Metropolitan Centre which is to "comprise distinct development precincts including residential neighbourhoods, office districts, **employment Areas** and mixed-use areas, all linked by a robust system of parks, public squares and open spaces..." My small business IS an employment area. My business employs up to 50 people when we can operate at full capacity, to allow this variance would destroy not only the small business which is still housed there, but the employment opportunities that my staff rely on, as such this directly contradicts with the OP.

I respectfully implore the Committee of Adjustments to take into serious consideration my above noted oppositions to the variances being sought. I appreciate your time and attention to this matter.

Thank you,

Bart Kacki
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