

SUBJECT: **RECOMMENDATION REPORT**
Authorization for Submission of a Minor Variance
Application by King Square Limited on the lands municipally
known as 9390 Woodbine Avenue (Ward 2)

PREPARED BY: Amanda Crompton, ext. 2621
Planner II

RECOMMENDATION:

- 1) That the report entitled “Authorization for Submission of a Minor Variance Application by King Square Limited on the lands municipally known as 9390 Woodbine Avenue (Ward 2)”, dated February 10, 2020, be received;
- 2) That in accordance with the provisions of subsections 45(1.4) of the *Planning Act, R.S.O. 1990, c.P.13*, as amended, the Owner shall through this Resolution, be permitted to apply to the Committee of Adjustment for variances from the provisions of Zoning By-law 2019-35, before the second anniversary of the day on which the by-law was approved by Council; and
- 3) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

This report recommends that King Square Limited (the “Owner”) be permitted to apply to the Committee of Adjustment for a variance from the provisions of Zoning By-law 2019-35 before the second anniversary of the day on which the by-law was approved by Council.

BACKGROUND:

The approximately 2.09 ha (5.2 ac) subject lands are located on the northwest corner of Woodbine Avenue and Markland Street, municipally known as 9390 Woodbine Avenue (See Figure 1).

The subject lands contain a three-storey, 31,899 square metre shopping centre with 1,373 parking spaces. Construction of the shopping centre was completed in April 2019. In September 2019, the Plan of Standard Condominium was registered, creating and delineating the common elements and transferrable commercial units. Currently, occupancy of the condominium units within the King Square Shopping Centre is ongoing.

In March 2019, site-specific Zoning By-law 2019-35 was approved by Council to introduce a variety of additional permitted uses, including a ‘Recreational Establishment’ use to a maximum gross floor area (GFA) of 450 square metres. At the time, the 450 square metre ‘Recreational Establishment’ use was sought by the Owner to facilitate operation of an indoor playground.

PROPOSAL:

As outlined in a letter dated December 24, 2019 from the Owner's agent, KLM Planning Partners Inc. (see Appendix 'A' attached), the Owner wishes to submit a Minor Variance Application to seek relief from the 450 square metre GFA limit for a 'Recreational Establishment' use on the subject lands. As shown on Appendix 'B' attached, the Owner's proposal is for a 'Recreational Establishment' use of up to 2,128 square metres. However, as per Section 45(1.3) of the Planning Act, R.S.O. 1990, c.P.13 (the 'Planning Act'), an application for a variance from the provisions of a by-law is not permitted before the second anniversary of the day on which the by-law was amended, unless Council has declared by resolution that such an application is permitted. Since site-specific Zoning By-law 2019-35 was approved in March 2019, authorization from Council is required to permit the requested Minor Variance Application.

REGULATORY CONTEXT:**Bill 73 "Smart Growth for Our Communities Act, 2015"**

On December 3, 2015, the Province of Ontario enacted Bill 73 "Smart Growth for Our Communities Act, 2015", which amended the Planning Act and the Development Charges Act, 1997. Several changes to the Planning Act came into force on July 1, 2016. One of the changes to the Planning Act is the introduction of a two year moratorium (or "freeze") on three types of amendments, subject to Council's discretion to provide relief from the prohibition:

1. Amendments of a new Official Plan;
2. Amendments of a new comprehensive Zoning By-law; and
3. Minor variances of a by-law that has already been amended for the land, building or structure.

The focus of this report is on the Planning Act change that prohibits applying for a minor variance of a by-law for two years following the passing of an owner-initiated zoning by-law amendment (item 3 above), unless permitted by Council resolution, as detailed below:

Section 45 (1.2)

Subsection (1.3) applies when a by-law is amended in response to an application by the owner of any land, building or structure affected by the by-law, or in response to an application by a person authorized in writing by the owner. 2015, c. 26, s. 29 (2).

Section 45 (1.3)

Subject to subsection (1.4), no person shall apply for a minor variance from the provisions of the by-law in respect of the land, building or structure before the second anniversary of the day on which the by-law was amended. 2015, c. 26, s. 29 (2).

The only exception to this rule is where Council has declared by resolution, pursuant to Section 45 (1.4) of the Planning Act that an application can proceed. Section 45 (1.4) of

the Planning Act allows Council to exempt by resolution a specific application, class of applications, or applications generally from the two year moratorium:

Section 45 (1.4)

Subsection (1.3) does not apply in respect of an application if the council has declared by resolution that such an application is permitted, which resolution may be made in respect of a specific application, a class of applications or in respect of such applications generally. 2015, c. 26, s. 29 (2).

DISCUSSION AND CONCLUSION:

Since the enactment of Bill 73 and the subsequent amendments to the Planning Act, the Planning and Urban Design Department have implemented an approach that assumes no Minor Variance Applications are permitted before the second anniversary of the day on which the by-law was amended, unless Council has declared by resolution that such an application is permitted. Staff can, and have, included a resolution in Recommendation Reports to permit Minor Variance Applications within two years of the enactment of an amending by-law. However, in this instance, the resolution was not requested by the Owner.

At the time of the passing of Zoning By-law 2019-35, the Owner's agent signed a Declaration Form which read "I am aware that no applications for minor variance for the subject property will be permitted within two (2) years of Council enactment of the zoning by-law amendment, without Council authorization of such application".

Given that the subject lands are occupied by a shopping centre with many individual non-residential condominium units, the space and use requirements of future tenants may change, triggering the need for Minor Variance Applications. In this case, a potential tenant of the King Square Shopping Centre is seeking a larger indoor playground facility and/or an indoor badminton facility.

Staff recommend that Council authorize the Owner to apply to the Committee of Adjustment for variances from the provisions of Zoning By-law 2019-35, before the second anniversary of the day on which the by-law was approved by Council. Any Minor Variance Application submitted for the subject lands will go through the standard review process, which involves an evaluation by Staff of the appropriateness of the Minor Variance Application, through the lens of the four tests set out by Section 45(1) of the *Planning Act*, and a decision by the Committee of Adjustment.

FINANCIAL CONSIDERATIONS:

Not applicable.

HUMAN RESOURCES CONSIDERATIONS:

Not applicable.

ALIGNMENT WITH STRATEGIC PRIORITIES:

Not applicable.

BUSINESS UNITS CONSULTED AND AFFECTED:

Not applicable.

RECOMMENDED BY:

Biju Karumanchery, MCIP, RPP
Director of Planning & Urban Design

Arvin Prasad, MCIP, RPP
Commissioner of Development Services

ATTACHMENTS:

Figure 1: Location Map

Appendix A: Letter from KLM Planning Partners Inc.

Appendix B: Minor Variance Sketch – Proposed Recreational Use