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Town of Aurora  
**Committee of Adjustment Report**  
No. MV-2024-25

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**Subject:** **Minor Variance Application**  
95 Dunning Avenue  
Design Plan Services Inc. (c/o David Ingelman)  
CON 1 PT LOT 77 PLAN 488 PT BLK A & B PLAN 10328 LOT 36 RP  
65R7942 PARTS 3 5 AND 6 RP 65R17425 PART 1 RP 65R1318 PT  
PART 1  
File: MV-2024-25

**Prepared by:** Katherine Gatzos, Planner

**Department:** Planning and Development Services

**Date:** October 10, 2024

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## Application

The owner/applicant is requesting relief from the requirements of the Town's Comprehensive Zoning By-law No. 6000-17, as amended, to facilitate the use of a Medical Marihuana Production Facility. Based on the information provided to the Town, the following relief is being requested:

- a) Section 10.1 of the Zoning By-law No. 6000-17 permits a Medical Marihuana Production Use only in a Business Park (E-BP) zoning district.
  - The applicant is proposing a Medical Marijuana Production Use in a General Employment (E2) zoning district.

## Background

### Subject Property and Area Context

The subject property, municipally known as 95 Dunning Avenue, is located on the east side of Edward Street, north of Engelhard Drive, and abuts the Metrolinx rail corridor to the east. The subject property has a total area of approximately 2.68 hectares (6.63 acres) and has frontage on three (3) streets, Dunning Avenue, Edward Street, and Engelhard Drive.

The subject property presently contains an existing industrial building, with a total gross floor area of 16940 sqm. Only the north unit of the building (6211 sqm) is proposed to be used as a Medical Marihuana Production Facility. The south portion of the building is occupied by a different tenant and is an automotive parts storage facility.

**North:** Dunning Avenue, Industrial uses, Sheppard's Bush Soccer Field

**South:** Engelhard Drive, The Lighthouse Learning and Development Centre, Industrial uses

**East:** Metrolinx GO Transit Corridor, Kids Supergym Gymnastics Studio, EarlyON Child & Family Centres Aurora, Wood Wellness Centre, Industrial uses

**West:** Edward Street, Residential uses, Jack Wood Park, The Gathering Place Church, Dr. G. W. Williams Secondary School, Industrial uses

### **Proposal**

The applicant is requesting the subject variance to facilitate a "Medical Marihuana Production Facility" use on the subject property, zoned General Employment (E2). As indicated above, only the north unit of the existing building is proposed to be used as a Medical Marihuana Production Facility. The applicant has indicated that the north portion of the existing building has been used as a Medical Marihuana Production Facility for four (4) years.

The applicant stated that the proposed Medical Marihuana Production Facility will not include the export or sale of the medical Marihuana produced onsite, and that medical Marihuana produced onsite would be used for personal, medicinal use.

### **Project History**

In July 2020, the Town of Aurora received a complaint regarding the illegal operation of a Medical Marihuana Production Facility at 95 Dunning Avenue.

In October 2022, the Building Division laid charges for the non-permitted use of the subject property as a Medical Marihuana Production Facility. Since 2022, there have been numerous court appearances, with each appearance being adjourned to provide the owner the opportunity to file a planning application to legalize the use. At a recent court appearance on July 18, 2024, the Town requested that the matter be set for trial as the Town had not yet received any planning applications for the subject property and the illegal use continued. Instead, the court scheduled a judicial pre-trial hearing for September 6, 2024. Unfortunately, the court was delayed with other matters on September 6 and therefore, could not proceed with the hearing. The Town continued to

request a trial date. In response, the courts adjourned the Judicial Pre-trial hearing to October 22, 2024, and set a trial date for November 17, 2024.

In the meantime, a Pre-Consultation meeting was held for the subject proposal on February 22, 2024. At this time, Town Planning Staff indicated they would not support the introduction of a Medical Marihuana Production Facility on the subject property, and encouraged the applicant to explore alternative locations that would support this use. However, the applicant maintained their intent to pursue recognition of the use on the subject property. In response, Town Planning Staff indicated to the applicant that due to the nature of the proposed use, a Major Zoning By-law Amendment and Site Plan Amendment would be the most applicable applications to address this and maintained that the Town would not be supportive of introducing a Medical Marihuana Production Facility on the subject property.

Against Staff's opinion, the applicant has decided to move forward with their request to permit the Medical Marihuana Production Facility use on the subject property and has chosen to address this non-compliance with a Minor Variance application.

### **Official Plan**

The subject property is designated "General Industrial" in the Town of Aurora Official Plan (2024). The General Industrial designation applies to existing, older, industrial areas in the Town, including areas along Industrial Parkway North and South. This designation includes industrial and manufacturing uses, warehouse facilities and distribution centres, and the storage of goods and materials as permitted uses, subject to additional provisions.

### **Zoning**

The subject property is zoned "General Employment" (E2) in the Town of Aurora Zoning By-law 6000-17, as amended. Marihuana Production Facilities are not permitted in the E2 zone.

### **Preliminary Zoning Review**

A Preliminary Zoning Review (PZR) has been completed by the Town of Aurora's Building Division. The PZR identified the required variance, and no other non-compliance was identified.

### **Applicant's stated reason(s) for not complying with the Zoning By-law**

As stated on the application form, "The proposal is to legalize the medical Marihuana production use, for the personal use of the medical Marihuana license holders, within the

north portion of the existing building. The proposed use is not permitted within the existing "General Employment" zone and thus requires relief from the By-law.

## Planning Comments

Planning Staff have evaluated Minor Variance Application MV-2024-25 pursuant to the prescribed tests as set out in Section 45(1) of the *Planning Act*, R.S.O, 1990, c.P.13, as amended (the "*Planning Act*") as follows:

### a) **The proposed variance does not meet the general intent of the Official Plan**

The General Industrial designation applies to historical industrial areas surrounding Industrial Parkway North and South which exist in close proximity to residential uses west of Edward Street. The intent of the General Industrial designation of the Town's Official Plan is to permit a variety of industrial uses including manufacturing and warehousing, however, this must be done so in a manner that does not negatively impact surrounding land uses.

The proposed Medical Marihuana Production Facility is classified as a manufacturing facility and as such can be considered a permitted use within the General Industrial designation. Although a permitted use within the General Industrial designation, Section 10.7.3(e) of the Official Plan states "Permitted uses shall not emit noticeable or noxious ... air emissions which negatively impact adjacent land uses".

Staff have concerns regarding the potential cannabis odor emitting from the facility, which would negatively impact surrounding sensitive land uses, including established residential areas, community spaces including Jack Wood Park and the Gathering Place, and Dr. G. W. Williams Secondary School, just west of Edward Street (a local road).

The surrounding local area also includes businesses providing services to children and vulnerable persons which may be negatively impacted due to exposure to cannabis odor, including the Lighthouse Learning and Development Centre, Out of the Wood Wellness Centre, EarlyON Child & Family Centres Aurora and Kids Supergym Gymnastics Studio.

Staff are of the opinion that the Medical Marihuana Production Facility has the potential to emit odors and emissions that negatively impact adjacent land uses, and is therefore considered incompatible with surrounding uses, particularly sensitive land uses including residential zones, places of worship, childcare facilities and schools, and other community gathering spaces.

As such, staff are of the opinion that the proposed variance does not meet the general intent of the Official Plan.

**b) The proposed variance does not meet the general intent of the Zoning By-law**

The subject property is zoned “General Employment” (E2) by the Town of Aurora Zoning By-law No. 6000-17, as amended. Section 10.1 of the Zoning By-law does not permit the “Medical Marihuana Production Facility” use in the General Employment Zone.

On May 27, 2014, Town of Aurora Council passed Interim Control By-law (ICBL) No. 5626-14, to prohibit the use of the Town’s Employment Lands for Medical Marihuana Production. On May 26, 2015, following consultation with other municipalities and industry representatives, Council enacted By-law No. 5732-15, which amends the Zoning By-law, to restrict the use of Medical Marihuana Production to lands zoned Business Park (E-BP). The intent of By-law No. 5732-15 is to balance the economic interests associated with cannabis businesses, with the well-being of Town residents. Lands zoned Business Park are typically located along the Highway 404 corridor, where there are few residential zones present, and therefore less opportunity for negative impacts related to noise and air emissions.

The intent in regulating the location of Medical Marijuana Production Facilities is to limit exposure and impacts typically attributed to noxious, nuisance, and noticeable odors and/or emissions from said facilities on the surrounding area, particularly properties that consist of sensitive land uses.

As indicated previously, the subject property is surrounded by residential areas, community spaces, and schools. Therefore, staff consider permitting a Medical Marijuana Production Facility on the subject property to be inappropriate due to the surrounding neighbourhood context, and incompatible with the intent of the Zoning By-law regulations.

Through the implementation of By-law Nos. 5626-14 and 5732-15, the Town has reinforced its stance on this matter, ensuring that Medical Marihuana Production Facilities are not to be permitted within the General Employment zone. As such, staff are of the opinion that permitting a Medical Marihuana Production Facility on the subject property would be in violation of the Town’s Zoning By-law, including By-law Nos 5626-14 and 5732-15.

Therefore, staff are of the opinion that the proposed variance does not meet the intent of the Zoning By-law.

**c) The proposed variance is not considered desirable for the appropriate development of the land**

The Town's intent in regulating the location of Medical Marihuana Production Facilities is to ensure that surrounding sensitive land uses are not adversely impacted by potential noxious, nuisance and noticeable noise and emissions originating from said facilities. As discussed, the Town's Zoning By-law indicates that Medical Marihuana Production Facilities are only permitted in lands zoned Business Park (E-BP), which are typically located along the Highway 404 corridor and not intended to be within proximity to residential uses, thereby reducing negative impacts in the surrounding area. The subject property, zoned General Employment (E2), explicitly prohibits the use of Medical Marihuana Production Facilities.

As indicated through pre-consultation comments provided to the applicant, and discussed earlier herein, the Town considers the proposed use incompatible with the surrounding neighbourhood context, particularly as it relates to its proximity to residential areas, schools, places of worship, and recreational and community spaces. Staff believe it is paramount to ensure that the wellbeing and safety of residents, students, and those enjoying businesses and community spaces is maintained and protected. Therefore, staff cannot support the introduction of a Medical Marijuana Production Facility on the subject property, in such close vicinity to these sensitive uses.

As such, staff are of the opinion that the requested variance is not considered desirable for the appropriate development of the land.

**d) The proposed variance is not considered minor in nature**

The question of the minor nature of a proposed variance can be related to its scale and impact on adjacent properties. In the opinion of Staff, the requested variance has the potential of causing noticeable nuisance odors for the surrounding sensitive land uses and existing neighbourhood as a whole.

As indicated during the pre-consultation process, the Town identified that a Major Zoning By-law Amendment would be required to address the subject non-compliance and advised the applicant as such. It is the opinion of staff that permitting the subject variance would be in violation of the by-laws in place to ensure the safe regulation of Marihuana Production Facilities within the Town.

Staff are of the opinion that permitting a Marihuana Production Facility on the subject property would be incompatible with the nature of the surrounding uses, particularly sensitive land uses, including residential zones, places of worship, childcare facilities and schools, and other recreational and community gathering spaces.

As such, staff are of the opinion that the requested variance is not minor in nature.

## **Public Correspondence**

Written submissions were not received at the time of writing of this report. Should written submissions be received after the writing of this report, the Secretary Treasurer will provide the submission(s) to Committee members at the meeting.

## **Conclusion**

Planning staff have reviewed the application with respect to Section 45(1) of the *Planning Act*, and are of the opinion that the requested variance does not meet the requirements of Section 45(1) of the *Planning Act* for granting of minor variances. Staff recommend denial of the requested variance.

The onus is ultimately on the applicant to demonstrate why they should be granted relief from the requirements of the Zoning By-law and how they satisfy the four tests.

## **Attachments**

Appendix 'A' – Site Plan and Elevations