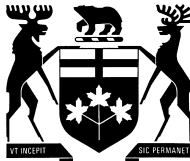


ISSUE DATE:

February 20, 2008



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL060702
PL070625

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant: F.S. Port Credit Development Ltd.
Subject: Minor Variance
Property Address/Description: 65 Port Street East, Units B and C
Variance from By-law: 1227
Municipality: City of Mississauga
OMB Case No.: PL060702
OMB File No.: V060388
Municipal File No.: A-289/06

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: F.S. Port Credit Development Ltd. (65 Port Street)
Subject: By-law No. 0225-2007
Municipality: City of Mississauga
OMB Case No.: PL070625
OMB File No.: R070171

APPEARANCES:

Parties

Counsel

City of Mississauga

Quinto Annibale & A. Wilson-Peebles

F.S. Port Credit Development Ltd.

John Alati

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. de P. SEABORN
ON FEBRUARY 4, 2008 AND ORDER OF THE BOARD**

The matters before the Board consist of first, an appeal of a decision of the Committee of Adjustment (Committee) for the City of Mississauga (City); and second, an appeal of Zoning By-law 0225-2007. At the commencement of the hearing Counsel advised that both appeals are now resolved and requested the Board issue an Order dismissing the appeal against the zoning by-law and authorizing a variance from By-law 1227, as amended.

Mr. Arbuckle, a qualified land use planner retained by F. S. Port Credit Development Ltd. (Appellant), provided the Board with factual and opinion evidence in connection with the appeals before the Board. Briefly, the Appellant seeks relief from the requirements of By-law 1227 to permit a business, professional or administrative office use within a R4- Section 617 zone. The zoning category permits an apartment building and a retail and personal service commercial establishment. The rationale for this zone is to attract pedestrian activity to this area of the City (Public Waterfront Square), and reduce the level of office activity. However, in this instance while the building consists of residential units, the owner has been unable to lease all of the ground floor units for retail use as contemplated under the zoning by-law. Accordingly, the owner wishes to lease the space for non-retail business or professional uses. In order to do so, a variance from the By-law is required. There is no opposition to the variance sought. There is no issue with respect to parking. The units are vacant at present and it would, in Mr. Arbuckle's opinion, be preferable for the owner and the City if the units were occupied. The City is now satisfied with the variance in light of revisions made to the zoning for the area that re defines "Office". In addition, there is further agreement between the parties that a "Medical Office" or "Restricted Medical Office" is prohibited as one of the office uses for the units.

The Board adopts and relies upon the opinion of Mr. Arbuckle that the variance sought represents good planning and should be authorized by the Board. The purpose and general intent of the Official Plan and the Zoning By-law are maintained, the variance is desirable for the appropriate development of the building and the variance is minor in impact. With respect to the appeal of the Zoning By-law, the Appellant confirmed that it is no longer necessary to pursue that matter and further confirmed that its appeal could be dismissed in its entirety. There remains unrelated appeals against the zoning by-law that are not affected by the dismissal of the Appellant's appeal.

Consistent with the request of the parties, as set out in Exhibit 2 reproduced as (Attachment 1) the Board Orders as follows:

1. The appeal with respect to the minor variance is allowed, in part. The variance from By-law is authorized as described in Attachment 1 (Exhibit 2).

2. The appeal of Zoning By-law 0225-2007 is dismissed.

This is the Order of the Board.

“J. de P. Seaborn”

J. de P. SEABORN
VICE-CHAIR

ATTACHMENT 1

- A. The parties will make a joint submission to the Board, requesting the Board to dispose of the appeals in OMB Case No. PL060702 (OMB File No. V060388) by issuing an order which will:
1. With respect to the minor variance appeal in OMB Case Number PL060702, allow the appeal in part and authorize a variance from By-law 1227 by permitting the establishment of an "Office" (as defined in Zoning By-law 0225-2007) within the subject building, but specifically prohibiting the use of the said building for the purposes of a "Medical Office" or a "Restricted Medical Office" (both as defined in Zoning By-law No. 0225-2007; and
 2. With respect to the Zoning By-law appeal in OMB Case Number PL070625, (previously OMB file No. R070171), dismiss the appeal of Zoning By-law No. 0225-2007, by F. S. Port Credit Development Inc. in its entirety.
- B. Each party agrees to pay its own costs and neither party will seek, nor support an order for costs against the other.