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PL071145

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

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

Applicant and Appellant: Marianayagam Vaithiampillai
Subject: Minor Variance
Variance from By-law No.: 0225-2007
Property Address/Description: 2201 Bostock Crescent
Municipality: City of Mississauga
OMB Case No.: PL071145
OMB File No.: PL071145
Municipal No. A-409/07

APPEARANCES:

Parties

Counsel

Marianayagam Vaithiampillai

City of Mississauga

Brent Duguid

**DECISION OF THE BOARD DELIVERED BY R. A. BECCAREA AND
ORDER OF THE BOARD**

Background

The City of Mississauga's Committee of Adjustment on November 1, 2007 refused to allow the Appellant's request to permit a take-out restaurant at 2201 Bostock Crescent. Zoning By-law 0225-2007 permits a take-out restaurant use but not if it is within 60 metres to a residential zone. The use, if permitted, because of its proposed location within the property, would offend the by-law provisions in 3 of its 4 directions.

The 60-metre provision was initially provided for in the City's former Zoning By-law 5500 and carried forward in its current by-law. All restaurant uses within a Convenience Commercial, Neighbourhood Commercial, General Commercial and Main

street Commercial Zones provide for a 60-metre minimum separation distance from residential zones.

A December 18, 1995 report by Thomas Mokrzycki, Commissioner of Planning and Building to his planning and development committee, summarized the rationale for the 60-meter distance separation contained in the zoning by-laws. It did not result from a comprehensive study, but rather was selected as an arbitrary distance to give the City some additional control where a restaurant is established by a Committee of Adjustment variance or a rezoning. He advised that it was not intended to be completely inflexible. Where applications for relief are sought the consideration should be based "on the individual merits of the application, having regard for the surrounding land use, location, size, function and the siting of the shopping centre".

The subject property is a 40-year old plaza that the Appellant bought in 2005. It contains 9 residential units on the second floor and 9 retail units, at grade, that are capable of some combination of uses. The Appellant is seeking to establish the restaurant use within the easterly end unit.

The application, both at the Committee of Adjustment and the Board, was opposed by the area residents, six of which the Board heard from.

Area Residents' Concerns

The Board heard from John Kenneth Moffatt, Terry Vachon, Bill Gates, Art Crowder and Ekia Zielinska, who all reside on Bostock Crescent. They expressed concern about the proposed restaurant attracting students from nearby schools that would exacerbate the effects of an already established hang out at the existing convenience commercial uses within the plaza. The plaza has a long history of not being very well kept up and one resident in particular saw the restaurant providing no value to the neighbourhood, but only problems.

Planning Evidence

Paul E. Johnston of Kentridge Johnston Limited advanced the Appellant planning case, while Peter J. Smith provided planning evidence for the City. Both were retained, subsequent to the Committee of Adjustment decision.

Mr. Johnston stressed Mr. Mokrzycki's comments that the Board ought not to establish an arbitrary standard of 60 metres but rather consider the proposed variance on the merits of its individual application to this particular neighbourhood.

Mr. Johnston, in advising the Board that the four tests contained in Section 45 (1) of the *Planning Act* were met, noted that the size of the restaurant is small and would be separated on three sides by a road. While the 60-metre separation was carried forward in the City's current by-law, Mr. Johnston advised that the new Official Plan has done away with a structured retail hierarchy and the current zoning by-law now permits restaurants in every area except one. The use would be compatible with other existing uses in the plaza and would fill vacant space and as such he believed the requested variance was both minor and desirable.

Mr. Johnston provided the Board with examples in the Clarkson/Lorne Park planning district where restaurants are located within a 60-metre distance separation from residential uses. He conceded that only one, however, had a similar convenience commercial designation and a C1 zoning to the subject property.

The eight examples that Mr. Johnston provided of restaurants within the Clarkson/Lorne Park area however, in the Board's view, have entirely different relationships to their adjacent residential neighbourhoods that the subject site has. In that regard, the Board agrees with Mr. Smith's observations.

Mr. Smith advised that the application did not constitute good land use planning. He pointed out that there are a lot of reported issues on site, as evidenced by the area Councillor's comments and a restaurant use would only add to them. Mr. Smith noted a number of site deficiencies related to parking and the location of garbage disposal areas, which the Board does not find persuasive. The site has existed for over 40 years without any reported parking or site constraint issues that the Board was made aware

of. What the Board however does find persuasive, is Mr. Smith's opinion that the application cannot be considered desirable nor can it satisfy the zoning by-law test.

The City established a flexible criteria in considering variances to the minimum set back for restaurant uses. When it did so however, it asked both its Committee of Adjustment and this Board to carefully consider such a variance in the neighbourhood context. The Board finds that it is not desirable to permit a restaurant use at this location that can be frequented by nearby school children, especially when, as the area residents advised, the site is already experiencing impacts from noise, litter and loitering . The Board is satisfied adverse impacts will result if the variance is authorized.

The Board has considered two decisions by two of my respected and former colleagues, Ms Rogers and Mr. Watty. In Weston Rutherford Centre Inc. v Vaughan (City) [2003] O.M.B.D. No. 932 Ms Rogers dealt with similar neighbourhood concerns in refusing a rezoning and site plan request. In 571106 Ontario Ltd v Mississauga (City) Committee of Adjustment [1996] O.M.B.D. No. 618 Mr. Watty specifically dealt with a variance to accommodate a restaurant within 60 meters and found the variance to be inappropriate. Similar to this matter, Mr. Watty concluded that other more appropriate uses for the neighbourhood were not explored, that would have posed no significant neighbourhood conflicts. There was no evidence that the medical or dental office that Ms Zielinska wished was considered by the Appellant or that unsuccessful attempts to find more suitable tenants for the vacant unit, were even made.

The Board finds that the requested variance does not constitute good land use planning and in that regard prefers the opinion of Mr. Smith to that of Mr. Johnston.

The Board Orders that the appeal is dismissed. The variance is not authorized.

"R. A. Beccarea"

R. A. BECCAREA
MEMBER