

ISSUE DATE:

May 6, 2008



PL080111

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

Appellant:	Paul Mallard, City of Hamilton
Applicant:	1622134 Ontario Ltd. (Klavert & Sons Construction Ltd.)
Subject:	Minor Variance
Variance from By-law No.:	87-57 (Ancaster)
Property Address/Description:	522 Book Road East
Municipality:	City of Hamilton
OMB Case No.:	PL080111
OMB File No.:	PL080111
Municipal No.:	A-317/07

APPEARANCES:

Parties

1622134 Ontario Ltd. and
Klaver & Sons Construction Ltd.

City of Hamilton

Counsel*/Agent

Lisa Sherritt

Nancy Smith*

**MEMORANDUM OF ORAL DECISION DELIVERED BY M.G. SOMERS ON
APRIL 24, 2008 AND ORDER OF THE BOARD**

This is a settlement hearing by way of a telephone conference. 1622134 Ontario Ltd. and Klaver & Sons Construction Ltd. ("the Applicant") are owners of the property at 522 Book Road East ("the subject property") in the City of Hamilton ("the City"). The Applicant is requesting relief from the provisions of the Zoning By-law No. 87-57 to permit a conversion of the existing legally established non-conforming school into a place of worship.

On December 13, 2007, the Applicant applied to the Committee of Adjustment (“the Committee”) under subsection 45(2) (a) (ii) of the *Planning Act* to change the existing legal non-conforming school use to a place of worship. In addition, the Applicant applied under subsection 45(2) (a) (i) to expand the building on the subject site with a 3,200 square feet addition. The Committee granted the permission. The City appealed the Committee’s decision to the Board pursuant to subsection 45(12) of the *Planning Act*.

A school presently operates out of a 4,500 square foot building on a 3.1-acre lot. The subject property is less than 1 kilometre from the John C. Munro Hamilton International Airport and is above the 30 NEF/NEP Contour and is within a strip of existing residential development along Book Road.

The parties have reached a settlement regarding the above matter and have filed Minutes of Settlement and attached herewith and marked as Attachment “1”.

Alvin Chan, a qualified planner with the City’s Planning Department filed an Affidavit dated April 14, 2008 and provided *viva voce* evidence at the telephone conference hearing in support of the Applicant’s proposal.

Mr. Chan testified that when looking at changing the school use to a place of worship under Section 45(2) (a) (ii) of the *Planning Act*, the uses have to be a similar institutional use that would attract similar land-use planning considerations. In Mr. Chan’s opinion, the two institutional uses are similar and as such the impacts of a place of worship use would be very similar to those of a school.

It was Mr. Chan’s evidence that when looking at the expansion of the subject building under subsection 45 (2) (a) (i), the test would be whether such an expansion would have an adverse impact on the existing and planned function of the area.

Mr. Chan testified that the subject property is part of a strip of existing residential properties on Book Road. He maintains that an expansion of the legal non-conforming use would have no adverse impact on these residential uses given the availability of parking on the subject property and given the size of the property is 2.5 acres.

It was Mr. Chan's evidence that even though the Official Plan designates these lands as "Agricultural", the City is presently undertaking a secondary planning process to determine the appropriateness of these lands for employment uses. Given the subject property's proximity to the airport and its location to Highway 403 and Highway 6, these lands are in a good location for employment uses. However, Mr. Chan notes that these lands are also surrounded by a number of existing residential parcels. He testified that if the secondary planning process does determine that these lands should be designated as employment lands, separation distances would be required to accommodate the existing school and residential uses. Mr. Chan maintains that expanding the church use will not change this. It is Mr. Chan's opinion that the proposed expansion will not have an adverse impact on the planned function of this area given its location as part of an existing sensitive land-use enclave.

In addition, it is Mr. Chan's opinion that the application to change the legal non-conforming use from a school to church and to expand it would be consistent with the Provincial Policy Statement ("PPS"). However, Mr. Chan notes that his opinion that the change in land use is consistent with the PPS is subject to the following condition:

Prior to the issuance of a building permit, the owner/applicant shall investigate the noise levels on the site and determine the noise control measures that are satisfactory to the City of Hamilton in meeting the Ministry of the Environment's recommended sound level limits. An acoustical report prepared by a qualified professional engineer containing the recommended sound level limits. An acoustical report prepared by a qualified professional engineer containing the recommended control measure shall be submitted to the satisfaction of the City of Hamilton, Director of Planning.

The Board accepts the Minutes of Settlement filed by the parties.

Based on the uncontradicted planning evidence and that the parties have mutually reached an agreement the Board finds the tests for changing a legal non-conforming use are met. Specifically, the Board finds that the change in use is similar. The Board further finds that the test for extending a legal non-conforming right and expanding the subject building is satisfied in terms of the appropriateness of the development proposed.

The Board Orders that the appeal is allowed in part, and authorizes the lands at 522 Book Road in the City of Hamilton be used for a place of worship and that the building at the said property be expanded by an addition not to exceed 3,800 square feet, subject to the condition set out in Attachment "1" to this Order.

The Board so Orders.

"M. G. Somers"

M. G. SOMERS
MEMBER

ATTACHMENT 1

OMB File No. PL080111

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c.P.13, as amended

Appellant:	City of Hamilton
Applicant:	1622134 Ontario Ltd. (Klavert & Sons Construction Ltd.)
Subject:	Change and Expansion of a Legal Non- conforming use
Property/Address/Description:	522 Book Road East
Municipality:	City of Hamilton
OMB Case No.:	PL080111
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Municipal No.:	A-317/07

MINUTES OF SETTLEMENT

The Parties consent to an Order of the Ontario Municipal Board as follows:

1. This Board orders that the lands at 522 Book Road, Hamilton (formerly Ancaster) may be used for a place of worship, this use being similar to the existing legal non-conforming use, a school.
2. This Board orders that the building at 522 Book Road may be expanded by an addition not to exceed 3,800 square feet, on the condition that:

Prior to the issuance of a building permit, the owner/applicant shall investigate the noise levels on the site and determine the noise control measures that are satisfactory to the City of Hamilton in meeting the Ministry of the Environment's recommended sound level limits. An acoustical report prepared by a qualified professional engineer containing the recommended control measure shall be submitted to the satisfaction of the City of Hamilton, Director of Planning.

Dated at Hamilton this 14th day of April, 2008.

City of Hamilton
By its solicitor
Nancy Smith



1622134 Ontario Ltd.
Klavert & Sons Construction Ltd.
By their authorized agent
Lisa Sherritt



I have authority to bind the corporations.