

ISSUE DATE:

February 3, 2009



PL080779

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 /Appellant: Mike Pernfuss
Subject: Minor Variance
Variance from By-law No.: 05-200
Property Address/Description: 109 George Street
Municipality: City of Hamilton
OMB Case No.: PL080779
OMB File No.: PL080779
Municipal No. A-113/08

APPEARANCES:

Parties

Mike Pernfuss & Paul Pappas
City of Hamilton

Counsel

J. I. Marini
M. Kovacevic

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. P. ATCHESON
ON JANUARY 26, 2009 AND ORDER OF THE BOARD**

This was a hearing in the matter of appeals by Mike Pernfuss (the Appellant), from a decision of the Committee of Adjustment for the City of Hamilton (File HM/A08: 113) that refused to authorize the following minor variance for a property known municipally as 109 George Street in the City of Hamilton. The variance sought from Zoning By-law No. 05-200 of the City of Hamilton is as follows:

1. To permit the expansion of the existing fifty (50) person outdoor patio used in conjunction with the forty (40) seat restaurant to a facility with seating accommodation for two hundred and forty nine (249) persons (outdoor patio) instead of the maximum fifty (50) seats permitted by the By-law.

The follow individuals with the consent of the Parties were granted Participant status for the hearing:

1. Sarah Matthews, President, Durand Neighbourhood Association, 332 Bay Street, Hamilton Ont., L8P 3J8.
2. James Nicholson, Vice President, Central Association of Neighbourhoods, 89 Napier Street, Hamilton Ont., L8R 1R9.
3. Superintendent John Petz, Hamilton Police Services, 155 King William Street, Hamilton Ont., L8N 4C1.
4. Staff/Sgt. Mark Cox, Hamilton Police Services, 155 King William Street, Hamilton Ont., L8N 4C1.

At the commencement of the hearing, Counsel for the City, with the consent of Counsel for the Appellant, requested an adjournment of the hearing. He presented to the Board a resolution from the City's Economic Development and Planning Committee Exhibit 2 that recommended a settlement of the matter under appeal. The Committee's resolution, however still needs to be considered and approved by City Council.

It is on this basis that the Parties are seeking an adjournment of the proceeding.

Ms Matthews expressed concerns as she was prepared to proceed at this time. Superintendent Petz indicated the Police Services would be making a presentation to City Council on the matter.

The Board after considering the submissions finds that it would be appropriate and prudent to adjourn the hearing at this time, in order to allow City Council to consider and decide upon the recommendations of its Committee.

The request for an adjournment is granted.

Counsels for the Parties on consent are directed to request a new hearing date subject to the availability of the Board.

Counsel for the Municipality is directed to give notice to the Participants once a new hearing date is determined.

No further notice is required.

The member is not seized.

This is the Order of the Board.

"J. P. Atcheson"

J. P. ATCHESON
MEMBER