

ISSUE DATE:

Feb. 10, 2009



PL081249

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: J. G. Tompkins Insurance Agency Inc.
Subject: Minor Variance
Variance from By-law No.: 0225-2007
Property Address/Description: 4161 Tomken Road
Municipality: City of Mississauga
OMB Case No.: PL081249
OMB File No.: PL081249
Municipal No. A309/08

APPEARANCES:

Parties

Agent

J.G. Tompkins Insurance Agency Inc.

G. Tompkins

City of Mississauga

M. Commisso

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. V. ZUIDEMA
ON JANUARY 15, 2009 AND ORDER OF THE BOARD**

Mr. G. Tompkins owns and operates J.G. Tompkins Insurance Agency Inc. at 4161 Tomken Road in the City of Mississauga (the "subject property"). He has run this business from this location since 1985 and over the years has obtained minor variances and extensions to those variances to allow him to use a portion of his dwelling at this site for the operation of an insurance office.

The subject property was constructed in 1960 and sometime in 1980, Ventro Construction assembled lands resulting in a plan of subdivision which was registered in 1984 as Plan M-632. Two properties, including the subject property were not included in the plan of subdivision but the plan envisioned that these two properties would be

included in the plan one day. Mr. Tompkins was not involved with the property at this time and purchased it a year later.

The Rathwood District Plan of the City of Mississauga Official Plan (s. 4.28.4.1.1) currently designates the subject property Residential Low Density 1 which does not provide for an office or home office use. At the time Mr. Tompkins purchased the subject property, the City's Official Plan did permit home based business.

The zoning for the subject property is Residential R3 and the general provision in the City's zoning by-law for residential zones is that home occupations are permitted subject to specific conditions. One of those conditions is that "the dwelling in which the home occupation is located shall be the principal private residence of a person or persons conducting the home occupation and they must not be an occasional or casual resident thereof." (ss. 4.1.16.1.6 at Ex. 1 tab 2 pg. 8).

In 1985 Mr. Tompkins received approval from the City's Committee of Adjustment to permit him to operate his insurance business from his residence. That permission was renewed in 1988, 1991, 1996, 2001 and again in 2007. This permission expires in October 2012.

However, in the last year, Mr. Tompkins has chosen to live elsewhere such that the dwelling located on the subject property is no longer his principal residence. Mr. Tompkins is now semi-retired and resides in Florida for most of the year. The residential portion of the building on the subject property is vacant. This change of circumstance meant that Mr. Tompkins no longer met the condition to continue his home occupation. Therefore, he sought other alternatives.

The City's Planning Staff recommended that he obtain an OPA and rezoning for the subject property but when he pursued those options, he was advised by the City's Development Application Review Committee (DARC) that a rezoning would not be supported as doing so may prevent the eventual completion of the subdivision plan and "would result in the permanent sterilization of the remnant parcels of land associated with Registered Plan M 43M-632." Therefore although Planning Staff had suggested a rezoning, it could not support such an application after all.

Therefore Mr. Tompkins pursued another minor variance to permit him to operate his insurance business without the condition that the premises be his principal residence. The Committee of Adjustment refused this application and recommended “a more formal review should be pursued through a Rezoning application with City Council.” Mr. Tompkins appealed this decision to this Board.

The City attended at the outset of the hearing to indicate that it would not be participating or taking a position at the hearing; however, it presented conditions which it recommended be included should the Board decide in favour of the Appellant. Those conditions were filed as Exhibit 2. The recommended conditions to which Mr. Tompkins agreed would ensure that the business operating from the subject property would be limited to an insurance office, that the variance would be temporary for a period of 5 years, terminating on or before January 15, 2014.

Mr. Dirk Blyleven was qualified as an expert Planner able to provide opinion evidence and testified in support of the appeal. His evidence was not challenged. He opined that the minor variance application met the four tests required by ss. 45(1) of the *Planning Act*. He went on to conclude that the conditions recommended by the City, and agreed to by his client, were appropriate and sensible for the short term. He could support the variance sought subject to the two conditions indicated above as it provided the City with the opportunity to monitor the property for a finite period of time and avoided a protracted battle concerning a potential rezoning. He therefore opined that the variance, subject to conditions, represented good planning and was in the public interest.

The Board accepted Mr. Blyleven’s undisputed evidence as a basis for its decision to allow the appeal and authorized the variance subject to the aforementioned conditions. The Board was satisfied that the variance subject to the recommended conditions met the legislative four tests and under the circumstances, represented good planning.

THEREFORE THE BOARD ORDERS that the appeal is allowed and variance to By-law 0225-2007 of the City of Mississauga is authorized subject to conditions set out in Exhibit 2 which is attached as Attachment “1” to this Order.

This is the Order of the Board.

“J. V. Zuidema”

J. V. ZUIDEMA
VICE CHAIR

Ex 2

ATTACHMENT "1"

PL081249

Ontario Municipal Board

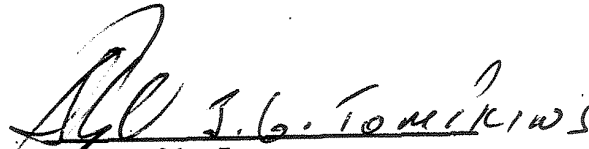
IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant:	J.G. Tomkins Insurance
Subject:	Minor Variance
Variance from By-law No.:	0225-2007, as amended
Property Address/Description:	4161 Tomken Road
Municipality:	City of Mississauga
OMB Case and File No.:	PL081249
Municipal No.:	A309/08

The appellant, as registered owner of the subject property and hereby agrees that the following conditions be imposed in the approval of minor variance A309/08:

1. That the business operating from the subject property be limited to an insurance office.
2. This variance is granted for a temporary period of five (5) years to expire and terminate on or before January 15, 2014.

Dated:


J.G. Tomkins Insurance