

ISSUE DATE:

**December 9, 2011**



PL110527

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: Melburn Truck Lines Corp.  
Subject: Minor Variance  
Variance from By-law No.: 0225-2007  
Property Address/Description: 556 Southdown Road  
Municipality: City of Mississauga  
Municipal File No.: A-094/11  
OMB Case No.: PL110527  
OMB File No.: PL110527

IN THE MATTER OF subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Referred by: Melburn Truck Lines Corp.  
Subject: Site Plan  
Property Address/Description: 556 Southdown Road  
Municipality: City of Mississauga  
OMB Case No.: PL110527  
OMB File No.: PL110496

**APPEARANCES:**

**Parties**

Melburn Truck Lines Corp.

City of Mississauga

**Counsel**

B. H. Kussner

A. Wilson-Peebles & D. Koehn  
Student-at-Law

**DECISION DELIVERED BY J. P. ATCHESON AND  
INTERIM ORDER OF THE BOARD**

**INTRODUCTION**

This was a hearing in the matter of an appeal by Melburn Truck Lines Corp., (Melburn) from a decision of the Committee of Adjustment of the City of Mississauga (Committee File A-094-11) that refused to authorize variances for a property known municipally as 556 Southdown Road. The variances sought are from Zoning By-law 0225-2007, as amended, and seek:

1. to permit the outdoor storage of ocean containers and an outdoor truck terminal on the subject property; and
2. to permit an existing office trailer accessory to the outdoor truck terminal and outdoor storage uses to remain on the subject property having a side yard of 3.0 m (9.84 ft).

By-law 0225-2007, as amended, does not permit outdoor storage in this instance, does not permit a truck terminal and requires a truck terminal to be used within a building or structure and requires a minimum side yard of 7.5 m (24.60 ft) in this instance.

Melburn, on February 14, 2011, filed a Site Plan application with the City for the accessory office trailer located on the site. This application was returned by the City on May 10, 2011. The Appellant has appealed this refusal of the City to make a decision with respect to the Site Plan application.

These matters have been consolidated for the purposes of this hearing.

## **CONTEXT AND EVIDENCE**

The Board was advised at the commencement of the hearing that the parties had reached a settlement with respect to the matter now before the Board. The Minutes of Settlement are set out at Exhibit 2. The substance of the settlement is that the City takes no position with respect to whether a variance is required to authorize the use of outdoor storage of ocean containers and an outdoor truck terminal on the subject property.

The position of the parties with respect to the yard variance is that the parties have no difficulty with this variance subject to Melburn:

1. making application to the City for a Certificate of Occupancy; and
2. filing a new Site Plan with the municipality in the form of Exhibit 6, being a Site Plan prepared by Tarasick McMillan Kubicki Limited dated March 30, 2010 and revised and dated February 15, 2011. It is also agreed by the parties that the Site Plan also contain a landscaping plan that provides a 3.0 metre wide landscaping strip on the Melburn lands in front of the existing fence along the Southdown Road frontage on both sides of the existing drive aisle and further, that the landscaping plan also delineate a 3.0 metre wide strip of land behind the existing fence to

act as a buffer area within which the vertical stacking of and storage of cargo containers, would be limited to a maximum of three containers in height.

The parties on consent requested that the Board approve the Site Plan in principle, in the manner found at Exhibit 6, subject to the parties entering into a Site Plan agreement together with the preparation of final Site Plan drawings as set out and agreed to in the Minutes of Settlement (Exhibit 2).

The Board heard uncontested testimony from Ms. Wendy Nott, a qualified land use planner, who was retained in July of 2011, to assist Melburn in the appeals now before the Board. Ms. Nott provided an overview of the area, the planning history associated with this site, and her planning opinions with respect to the status of the use and the appropriateness of the variance and the Site Plan requirements found in the Minutes of Settlement.

Ms. Nott testified that the subject property has been owned and used by Melburn as an outdoor storage area for cargo containers continuously since 1985. Melburn also operates on a portion of the site, a bonded customs sufferance warehouse that takes in bonded import and export ocean-going containers. Melburn's head office is located at 2215 Royal Windsor Drive, in close proximity to the subject site. All trucks entering or leaving the subject site must go through a gated controlled security checkpoint. Melburn's staff on the site is housed in an accessory office trailer as shown at Exhibits 6 and 9.

Since 1985 and up until the enactment of Official Plan Amendment No. 63 (OPA 63), the subject lands were designated "Industrial" under the former Southdown District Policies of the Mississauga Plan and City Plan. Under the previous Official Plan, the existing uses on the site were permitted and were zoned Industrial "M2". This area of the Southdown Road has developed in the past as a heavy industrial area as shown on an aerial photograph (Exhibit 7).

The City, on September 15, 2008, adopted OPA 63 which was finally approved by the Board on November 30, 2010. The subject site was redesignated "Business Employment", a designation that would not specifically recognize the existing use of the

property. However, it is instructive to note that section 4.31.5. 1(a) of OPA 63 states the following:

“Existing industrial operations, including existing outdoor storage areas, will be permitted to continue”.

On December 9, 2009, the City enacted Zoning By-law 369-2009 to amend Zoning By-law 0225-2007 to implement OPA No. 63. Under Zoning By-law Amendment 369-2009, the subject site was zoned “Employment” (E2) which had the effect of excluding among other things the truck terminal and transportation facility. However, this amending By-law in Section 3 provided an Exception E2-108, which states that:

Additional Permitted Use

8.2.3.108.1 (1) use legally existing on the date of passing of this By-law.

Ms. Nott’s uncontradicted testimony is that the Melburn’s use of the property was permitted by the previous Official Plan and Zoning By-law and as such, was a legally permitted use under that Zoning By-law and further, the City both in its updated Official Plan Amendment OPA 63 and its implementing Zoning By-law 369-2009, recognized Melburn’s use of the property.

It is clear to the Board from Ms Nott’s evidence, that the City is seeking a new planning direction with the establishment of more business park uses along Southdown Road. It is also equally clear that in doing so, the City also gave permitted use status to legally existing uses. Ms. Nott’s aerial photographs found at Exhibit 8, shows that Melburn’s operations were in place in 1989.

Ms. Nott testified that in 1995, 1999, and 2004, Melburn had applied to the Committee of Adjustment and had been granted a minor variance for the side yard associated with the on-site trailer. The reason for the continued variance applications was that the Committee of Adjustment only authorized the variance for a 5 year period. Ms. Nott opined that the variance being sought by this application was the same as the previous variances authorized by the Committee; that the variance being requested represented an existing use on the property and as such, was consistent with the intent and purpose of both the Official Plan and the Zoning By-law to recognize existing uses. She testified that to the immediate north is Praxair, an industrial use that has open

storage on their site and that in her opinion, the appropriateness of the variance has been determined by the previously authorized variances and that Praxair has never expressed any concerns with the variance. She sees the variance as minor and meeting the four tests of subsection 45(1) of the *Planning Act*.

Ms. Nott opined that the Site Plan and the conditions set out in the Minutes of Settlement were appropriate and represented good planning and would assist the City in its planning goal to upgrade this industrial area of the City.

## **FINDINGS AND CONCLUSIONS**

The Board, after carefully reviewing the evidence, the exhibits filed, and the submissions made by the parties, makes the following findings.

It is the Board's finding from the evidence of Ms. Nott and the exhibits filed, that the use of the property by Melburn is a legally permitted use as set out in both the City's Official Plan and Zoning By-law. This is not a subsection 45(2) of the *Planning Act* matter dealing with a legal non-conforming use. The use of the property at Melburn has been ongoing for many years as a recognized and permitted use in the Official Plan and Zoning By-law predating OPA 63 and Zoning By-law Amendment 369-2009, and that the use is currently recognized as a permitted use by OPA 63 and Zoning By-law Amendment 369-2009. It is the determination of the Board that no relief is required for the current use found on the property. The current use of the property is a legal use permitted by Exception E2-108 of Zoning By-law Amendment 369-2009.

It is also the determination of the Board that the 3.0 metre variance for the on-site trailer as in the past, meets the four tests of subsection 45(1) of the *Planning Act*. The Board in this regard, accepts the uncontradicted evidence of Ms. Nott that the variance represents good planning subject to the two conditions agreed to by the parties.

The Board is also satisfied that the framework for the Site Plan and the Site Plan agreement is well understood by the parties as reflected in the Minutes of Settlement (Exhibit 2), and as reflected in the plan found at Exhibit 6. The Board concludes that the parties, based upon these documents, should be granted the time to complete the Site Plan and Site Plan agreement substantially in the form found at Exhibits 2 and 6.

It is the Board's finding that the variance in question is a local matter and does not offend any provincial policy directions.

Accordingly,

**THE BOARD ORDERS** that the appeal is allowed in part, and the variance to Zoning By-law 0225-2007, as amended, to permit an existing office trailer accessory to the outdoor truck terminal and outdoor storage uses are to remain on the subject property having a side yard of 3.0 m (9.84 ft), is authorized subject to the following conditions:

1. Melburn making an application to the City for a Certificate of Occupancy; and
2. Melburn filing a new Site Plan with the Municipality in the form of Exhibit 6, being a Site Plan prepared by Tarasick McMillan Kubicki Limited dated March 30, 2010 and revised February 15, 2011 and that the Site Plan also contain a landscaping plan that provides a 3.0 metre wide landscaping strip on the Melburn lands in front of the existing fence along the Southdown Road frontage on both sides of the existing drive aisle, and further, that the landscaping plan also delineate a 3.0 metre wide strip of land behind the existing fence to act as a buffer area within which the vertical stacking of and storage of cargo containers would be limited to a maximum of three containers in height.

The Board is satisfied that with respect to the Site Plan appeal in this instance, that it would be appropriate to issue an Interim Order.

Accordingly, and for the reasons contained in this Decision, the Board will issue the following Interim Order,

**THE BOARD ORDERS** that the Site Plan appeal is allowed and that the Site Plan and related Site Plan Conditions will be approved substantially in the form found at Exhibit 6 attached hereto as Attachment "1" and shall contain the following requirements:

That the Site Plan also contain a landscaping plan that provides a 3.0 metre wide landscaping strip on the Melburn lands in front of the existing fence along the Southdown Road frontage on both sides of the existing drive aisle, and further, that the landscaping plan also delineate a 3.0 metre wide strip of land behind the existing fence to act as a buffer area

within which the vertical stacking of and storage of cargo containers would be limited to a maximum of three containers in height.

The Board will withhold its Final Order for 90 days from the date of this Decision pending receipt of confirmation from the City that the Site Plan and Site Plan agreement have been executed as set out in this Decision and substantially in the form found in the Minutes of Settlement (Exhibit 2).

The Board may be spoken to if any problems should arise.

“J. P. Atcheson”

J. P. ATCHESON  
MEMBER

