

ISSUE DATE:

SEPT. 27, 2011



PL110583

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: Marcia Mendes
Applicant: The Erin Mills Development Corporation
Subject: Minor Variance
Variance from By-law No.: 0225-2007
Property Address/Description: 4600 Ridgeway Drive
Municipality: City of Mississauga
Municipal File No.: A-158/11
OMB Case No.: PL110583
OMB File No.: PL110583

APPEARANCES:

Parties

Counsel

Marcia Mendes

Erin Mills Development Corporation

City of Mississauga

B. Horosko

A. Wilson-Peeble and
D. Koehn, Student-at-Law

**MEMORANDUM OF ORAL DECISION DELIVERED BY D. R. GRANGER
ON SEPTEMBER 14, 2011 AND ORDER OF THE BOARD**

This is an appeal by Marcia Mendes (Appellant) from a decision of the Committee of Adjustment (Committee) of the City of Mississauga (City) that granted an application for variances to By-law 0225-2007 (By-law) by Erin Mills Development Corporation (Applicant) on an approximate 10-acre property at 4600 Ridgeway Drive, being the southwest corner of Eglinton Avenue West and Ridgeway Drive (Subject Property).

The variances would permit the operation of a coin-operated spray car wash facility with ancillary uses where a motor vehicle wash facility is not expressly permitted (Proposal).

Also before the Board are variances that would permit a centreline setback from Eglinton Avenue West of 20.63 metres, instead of the minimum 22.8 metres and a centreline setback from Ridgeway Drive of 19.8 metres, instead of the minimum 20.8 metres. These two variances were not contested and based on the land use planning evidence presented, that was not contradicted, and the consent of the Parties, the Board authorizes these two variances.

L. Dale-Harris, on behalf of the Applicant, was qualified and presented expert land use planning evidence and opinion in support of the variances. Ms Harris and her firm have had a long-standing involvement with the Erin Mills Area as it has developed over the decades.

D. Breveglieri, on behalf of the City, was qualified and presented expert land use planning evidence and opinion, in support of the variances. Mr. Breveglieri has worked for the City in a land use planning capacity for seven years and is responsible for the reporting on this application as well as the detailed site plan application approval process required for the Subject Property.

M. Mendes, the appellant and an area resident, and R. Mateljan, an area resident and appellant to a previous application regarding the Subject Property as well as being a certified technician with the Ontario Association of Certified Engineering Technicians and Technologists, provided evidence in opposition to the Proposal.

Of critical issue in this case, is the matter of compatibility and character of the proposed car wash facility in the context of the larger commercial and employment development area separated from any existing residential development by Eglinton Avenue West, a major arterial road, and Ridgeway Drive, a major collector road.

In addition to the proposed car wash, the Subject Property will include a new major drug store, fast food restaurant, a major grocery store and other retail commercial units.

The proposed car wash, for the most part, is located on lands presently zoned Employment E2 that would permit an enclosed automatic car wash but not a coin-operated spray facility. An easterly sliver of the proposed facility located on the same

Subject Property, would be on land zoned Commercial C3 that includes no car wash facility permission.

From the north, the proposed car wash facility is separated from existing residential development by the 30-metre wide Eglinton Avenue West road allowance, a required landscaped strip along the northerly boundary of the Subject Property abutting Eglinton Avenue West and a new major drug store building. While there is some potential for an oblique view to the car wash facility from the residential area, it would be to the end wall of the car wash facility building and not the wash bays themselves that are facing west towards other designated employment lands. The total distance between the existing residential lands to the north and car wash facility is approximately 130 metres.

From the east, the proposed car wash facility is separated from existing residential development by the 26-metre Ridgeway Drive road allowance, a required landscaped strip along the easterly boundary of the Subject Property abutting Ridgeway Drive, and a new major grocery store building. There would be no view to the car wash facility. The distance between the existing residential lands to the east and the car wash facility is approximately 250 metres.

Lands to the west and south are designated and proposed for employment uses.

In this case before the Board, the Parties have chosen to rely on experts. It is the Board's responsibility to determine the weight to be afforded to their evidence. Experts are expected to be independent as provided for by most professional ethics standards. They have an obligation to the broader public interest and must inform and assist and not advocate.

In this case, the Board finds that the qualified land use planning experts have better met this obligation.

The expert relied upon by the Appellant, was not qualified as a land use planner and was forthright in his admission that he has had an active history as an area resident with the Subject Property, albeit a different application but none-the-less a car wash proposal, as an appellant on an appeal to this Board. The Board must weigh this clear lack of independence and expertise into its decision.

With respect to the intent and purpose of the City Official Plan (OP), there was consensus that the most important policies were those related to the protection and enhancement of compatibility especially as between employment and residential uses.

In this case, the OP contemplates a perimeter of retail commercial with employment uses located to the centre of the Subject Property.

The car wash facility is more related to the employment uses and is located as far to the south and west of the commercial perimeter as is possible.

The car wash facility is well separated and buffered from any residential area and forms part of a fully integrated commercial development where proper maintenance and security will be provided.

Nothing related to the car wash facility will interfere with the well established residential and commercial character developing along Eglinton Avenue West or Ridgeway Drive.

Nothing shook the unequivocal opinions of the land use planners in this regard and the Board is satisfied that the variances maintain the general intent and purpose of the Official Plan.

With respect to the intent and purpose of the By-law, in this case, the Board finds that implementing the OP, especially as it relates to the issue of compatibility, is paramount.

The car wash facility is a component part of a required detailed site plan approval process and is located as far from existing residential development as possible.

The coin-operated element of the proposed car wash facility is well mitigated by separation and orientation away from existing residential lands and separated by significant distance, major roadways, required landscaping and significant new commercial buildings.

There was no dispute with or contradiction to the City's stated intention to address coin-operated car wash facilities through applications to amend the By-law or

through applications to vary the By-law, on a case by case basis. There is no intention to specifically prohibit the use.

In this case, the application has been well scrutinized and found to meet the general intent and purpose of the By-law as implementing the OP and in this case insuring its compatibility with other development in the area.

The Proposal forms part of a comprehensive plan for the Subject Property enforceable through site planning control.

The proposed car wash facility is sensitive to all surrounding uses and is well-integrated without interference to the corridor character developing along Eglinton Avenue West or Ridgeway Drive.

The car wash facility is more related to and better fits the employment area expected to be located on the west and south portions of the Subject Property where now proposed.

In this case, the application is desirable for the appropriate development and use of the land.

In the circumstances of this case, the Board finds no evidence of any undue adverse impact resulting from the location of the car wash facility or it being coin-operated versus automatic. Anecdotally, the land use planner for the City did note the facility being potentially less noisy as air-drying equipment is normally associated with an automatic facility and not with a coin-operated facility.

While the proposed use is not specifically permitted, it is similarly not specifically prohibited.

The car wash facility is for the most part located on lands that would permit a car wash facility albeit not coin-operated. The Proposal constitutes a minor intrusion, in the order of 3 metres, onto the adjacent Commercial C3 Zone located on the same Subject Property.

The Board finds that in this circumstance, the extension of a car wash use onto the small portion of the Subject Property presently zoned Commercial C3, but still

designated Employment in the OP, to not constitute a significant altering of the use of the land.

The Board finds that the nature of a car wash facility as coin-operated versus automatic, in the context of the location proposed, to be minor and of potentially lesser impact than other as-of-right industrial use permissions.

For all of these reasons, the Board dismisses the appeal and authorizes the variances as approved by the Committee of Adjustment of the City of Mississauga.

The Board so Orders.

“D. R. Granger”

D. R. GRANGER
VICE-CHAIR