

ISSUE DATE:

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PL120152

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Frank Gusic has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to Zoning By-law 10225-2007 of the City of Mississauga to rezone lands respecting 306 Queen Street South from "R3" (Detached Dwellings) to "R3-Exception" (Detached Dwellings) to permit a two storey office and medical office building

OMB File No.: PL120152

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APPEARANCES:

Parties

Frank Gusic

City of Mississauga

Counsel

T. Halinski

M. Joblin

DECISION DELIVERED BY SYLVIA SUTHERLAND AND ORDER OF THE BOARD

Frank Gusic (applicant/appellant) applied to the City of Mississauga (City) for a zoning by-law amendment to permit a two-storey office and medical building at 306 Queen Street South (subject property). The application was to change the zoning from "R3" (Detached Dwellings) to "R3-Exception" (Office/Medical Office). The City's Planning and Development Committee refused the application and the applicant/appellant appealed that decision to the Board.

Subject property

The subject property is designated "Residential Low Density 1" in the City's Official Plan (OP) and is located within the boundary of the Streetsville Node. The Special Site 3 policies, which also apply, permit office uses on a discretionary basis subject to certain requirements. Although the area is considered to be an area in transition, according to a May 1, 2012 staff report signed by Edward R. Sajecki, Commissioner of Planning and

Development, the intent of the OP is to protect and preserve the area's residential character.

The subject property comprises approximately 0.21 ha (0.5 acres), and is currently occupied by a one-storey brick dwelling built in the 1940s with a gross floor area (gfa) of approximately 103 square meters built in the 1940s. The Heritage Advisory Committee recommended approval of the demolition of this dwelling.

Surrounding land uses include a range of single family residential uses, low-rise residential uses, a church and cemetery, as well as commercial uses located primarily in the core area of Streetsville.

Proposal

The proposed two-storey office and medical office building would be approximately 484 square meters (5,211 square feet), with 21 parking spaces at the rear of the building. The ground floor would be occupied by approximately 244 square meters (2,626 square feet) of medical use, while the second floor would be occupied by approximately 241 square meters (2,549 square feet) of non-medical office uses. There would be no residential component to the building. The front setback is proposed to be 7.54 m.

Hearing

Josip Milcic gave expert architectural evidence and Jonathan Rodger expert land use planning evidence on behalf of the applicant/appellant. Franco Romano gave expert land use planning evidence on behalf of the City.

Local residents Robert Small, Dawn Pollard, Carl Saunders, Randy Steffan, Rob Ralston, Mike Skiby, Nate Basiliko, Roger Wainwright, Dana Wilson and James Corbach were participants at the hearing. All spoke in opposition to the application.

Findings

Mr. Milcic, the project architect, told the Board that the proposed office and medical building reflected the architecture of Streetsville in its materials, details and size. He pointed out that there are many larger houses and buildings in Streetsville, including the historic Barber House, at 5155 Mississauga Road. In his opinion the scale of the

proposed building is in keeping, and not out of scale with others in Streetsville. He pointed out that the proposal required no variances.

Mr. Milcic said that the goal of the proposed building is to reduce its overall impact on human health and the natural environment through efficient energy use, an efficient building envelope, the protection of occupant health, the reduction of waste and pollution, on-site stormwater retention, bird-friendly glazing for all above-grade windows, and shielded exterior light fixtures.

While the Board has no doubt that the building Mr. Milcic designed is of pleasing form and high quality the question remains as to whether it is the right building for the subject property.

Special Site 3 OP policies apply to the subject property including policy 4.32.8.4 a) which states:

Any office conversion should maintain a residential appearance in keeping with the existing scale, materials and character of the existing dwellings in the immediate area. The existing house should be preserved if at all possible, while the interior floor plan may be altered for office use.

Counsel for the applicant/appellant argued that this section of the OP applied only to office conversions, not to redevelopments. It is clear, however, that the statement "the existing house should be preserved if at all possible" foresees a situation where the existing house will not be preserved, as is the case here. In such instances a residential appearance in keeping with the existing scale, materials and character of the existing dwellings in the immediate area, is still called for by policy 4.32.8.4.

That the proposed building maintains a residential appearance, there can be no argument. Neither can there be any argument that the proposed building is larger than any of the dwellings in the immediate area.

Mr. Rodger maintained that the proposed zoning by-law (ZBL) is consistent with the policies of the Provincial Policy Statement (PPS) and conforms to the policies of the Growth Plan (GP) by, among other considerations, representing an opportunity for intensification within an intensification area as designated in the Streetsville Node under the current OP and the Streetsville Community Node the new Mississauga OP.

However, as Mr. Romano testified, a "node" is "one of the lower orders of intensification" and intensification does not trump other policies. Policy 3.13.6.4 (c) of the current OP stresses "*compatible* building bulk, massing and scale of built form to provide an integrated streetscape" within intensification areas. The new OP, not yet in force, is nonetheless informative, but not determinative. It states in policy 5.5.11, "where there is a conflict between the Intensification Area policies regarding the Natural Areas System and heritage resources, the policies of the Natural Areas System and heritage resources will take precedence." The subject site is located in a Cultural Heritage Landscape area, which represents a heritage resource.

Mr. Rodgers made a great deal of the fact that the proposal represents the development of the subject site at a higher intensity than currently exists through "the redevelopment of an underutilized lot within a previously developed area"; but this is not a prime consideration. "Intensification" cannot be used as an excuse for allowing inappropriate development.

In the Board's view, the primary consideration in this application is the scale of the proposed building and its suitability for the subject site. While, as Mr. Rodger pointed out, the proposed building could be built as a single family residence as-of-right, it is equally the case, as Mr. Romano pointed out, "R3" is not a "build-to" document. Scale, character, existing streetscape, built form; mass and bulk are important considerations in section 4.32.8.4 of the OP.

The proposal represents a wholesale new redevelopment. It is not, as were other conversions referred to by Mr. Rodgers, within an existing residential building. Neither is it in the core area of Streetsville, such as the Thomas, Tannery and Pearl properties also referred to by Mr. Rodger. It is in a site specific area where the intent is to preserve the neighbourhood's unique and historic residential character. There is not even a residential component to the proposal. There is, however, a parking lot, which is not permitted in an R3 zone, and which is, in this instance, the consequence of the scale and use of the proposed building.

Section 4.1.17 of ZBL 0225-2007 permits the office of a resident physician, dentist, drugless practitioner or health professional in residential zones under certain conditions including that the detached dwelling is a private residence, that a maximum of one

physician, dentist etc. and a maximum of one employee be permitted, and that the gross maximum floor area of an office of a resident physician, dentist etc. be 100 square meters. The clear intention here is to limit the size and scale of professional offices to one resident physician, dentist, etc. so that the professional operation fits appropriately into a residential area.

In the proposal before the Board, there is no residential component and there would be many more than one professional practicing.

At 5,000 square feet, the building would clearly be of a size and scale not found in the immediate vicinity. It would be much more appropriately located a short distance away in the commercial core of Streetsville.

There was concern among the participants that allowing this proposal to proceed would set a precedent that would eventually destroy their historic residential neighbourhood. Precedence, as counsel for the applicant/appellant pointed out, is often a difficult argument to make as each application is considered on its own merit. In this case, however, once built, the building would become part of the streetscape and could be pointed to as such. In addition, Mr. Milcic and Mr. Rodger both made reference to other buildings and developments in some instances some distance away in their support of the proposal before the Board. If these were not precedent arguments, then what were they?

The proposed ZBL (Exhibit 16) does not regulate building scale. A building could in fact be built either smaller or larger than the proposal before the Board. While, as counsel for the applicant/appellant argued, performance standards could be worked out later and the Board could be spoken to, it might have been helpful had the proposed ZBL been more explicit.

Decision and Order

The Board concurs with Mr. Romano that the application does not represent good or proper planning. It is not representative of appropriate character, scale or proportion in relation to the neighbourhood and does not maintain the general intent or purpose of the OP.

The Board Orders that the appeal is dismissed and the variances are not authorized.

So Orders the Board.

“Sylvia Sutherland”

SYLVIA SUTHERLAND
MEMBER