

ISSUE DATE:

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PL121243

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Antorisa Investments Ltd. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to the Official Plan for the City of Mississauga to redesignate land at the Northwest corner of Hurontario Street and Derry Road West from "Business Employment – Special Site 2" to "Business Employment – Special Site" to permit a motor vehicle repair facility Approval Authority File No. OZ 11/018 W5 OMB File No.: PL121243

Antorisa Investments Ltd. 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 0225-2007 of the City of Mississauga to rezone lands respecting part of Lot 11, concession 1, W.H.S., designated as Parts 1 and 2, Plan 43R-13493 Northwest Corner of Hurontario Street and Derry Road West from "D" (Development) to "E2 – Exception" (Employment) R-1 to permit a motor vehicle repair facility OMB File No.: PL121244

APPEARANCES:

Parties

Counsel

Antorisa Investments Ltd.

D. Baker

City of Mississauga

R. Kehar

1181482 Ontario Limited

G. Borean

DECISION OF THE BOARD DELIVERED BY JASON CHEE-HING

CONTEXT

[1] Antorisa Investments Ltd. ("Proponent") has appealed the failure of the Council of the City of Mississauga ("City") to make a decision on its Official Plan Amendment ("OPA") and Zoning By-law Amendment ("ZBA") applications to permit the construction of a two storey motor vehicle repair facility known as Active Green and Ross on the subject lands. The subject lands are located at the Northwest corner of Hurontario Street and Derry Road West. The site is currently vacant.

[2] The subject lands are designated as Business Employment in the in-force Mississauga Plan 2003 (“2003 OP”) and zoned Development (D) under the applicable Zoning By-law No. 0225-2007 (“ZBL”). The Business Employment designation permits a motor vehicle repair facility on the subject lands; however, the Mississauga Official Plan 2011 (the “new OP”) does not permit this use. The new OP has been appealed in its entirety to this Board. The relevance of the new OP to these appeals and how much weight should be given to this policy document is an issue at these proceedings. The D zoning recognizes vacant lands not yet developed until such time that the lands are rezoned to be in conformity with the OP.

[3] An OPA is required as site specific policies contained within the OP require buildings to be a minimum of three storeys in height. A ZBL amendment (“ZBA”) is required to rezone the site from “D-Development” to “E2-Exception” to permit a motor vehicle repair facility with site specific zoning standards.

[4] At the hearing into these appeals, the City appeared in opposition to the Proponent’s applications and called expert planning and urban design evidence. 1181482 Ontario Limited (“1181482”) appeared as well in objection to the applications and called expert planning evidence in support of its position. 1181482 is the owner of an adjacent motor vehicle repair facility located on the east side of Hurontario Street. The Proponent called expert urban design, planning and transportation evidence in support of its applications. One participant (Kanellopoulos Holdings Inc.) provided lay evidence in opposition to the proposal. Kanellopoulos Holdings Inc. owns the abutting lands to the north of the site.

The Proposed Development

[5] The proposal is for a two storey motor vehicle repair facility (Active Green and Ross) that is 10.76 m in height. The Proponent asserts that while the building contains two functioning storeys, it will have the physical height and a built form of three storeys due to the articulation of the building. The building will also contain some office space on the second floor. Twenty one parking spaces are proposed and vehicular access is proposed from both Hurontario Street and Derry Road West (Exhibit 4).

EVIDENCE AND SUBMISSIONS

Antorisa Investments Ltd.

[6] It is the Proponent's position that although the proposal contains two functioning storeys, it has the appearance and built form of a three storey building when viewed from the street. They assert that the use (motor vehicle repair facility) is permitted in the OP. They assert that it is this OP which is in-force and applicable. They assert that the proposal meets the urban design guidelines including the minimum three storey height requirement found in the 2003 OP and that the proposed zoning standards are appropriate.

[7] Laurie McPherson, a qualified professional planner, proffered expert evidence in support of the proposal. She testified that at the time the applications were made in December of 2011 that City staff had confirmed in writing that the proposed use as a motor vehicle repair facility was permitted in the 2003 OP. It is her opinion that the proposed use, although not included as a permitted use in the new 2011 OP, is similar to the type of uses permitted for an E2 zone. The 2011 OP permits automotive body repair on the subject lands. In her opinion the proposed use as a motor vehicle repair facility is less intense than an automotive body repair facility. It is her opinion that the proposal meets the general intent of the 2011 OP even though it is the 2003 OP that is the in-force OP (Exhibit 6).

[8] It is her opinion that the planned future Light Rapid Transit ("LRT") system for Hurontario Street is a long term initiative. She gave the opinion that multi-storey office/corporate developments associated with the future LRT does not reflect the existing context. The existing context is one of low-rise and ground oriented retail/commercial establishments. It is her opinion that the proposal will not preclude future higher density development or higher order uses for this site as envisioned under the 2011 OP for the Gateway Corporate Centre Character Area ("GCCCA").

[9] In her opinion, the height of the proposal at 10.76 m, generally reflects a three storey building and is appropriate for the site. The built form has the appearance and aesthetics of a three storey building. It is her opinion that the proposed design will be compatible with the existing and planned context for the area. The proposed setbacks are appropriate and consistent with the existing surrounding context.

[10] Ms. McPherson opined that the applications are not pre-mature. The proposed OPA is consistent with and conforms to the Provincial Policy Statement 2005 ("2005 PPS") and the Growth Plan ("GP") and the City's 2003 OP. The proposal meets the spirit and intent of the 2011 OP. The proposed ZBA conforms to the City's in-force 2003 OP. Both proposed planning instruments in her opinion represent good planning and the proposal is appropriate for the site.

[11] Kenneth Chan, a qualified transportation planner, proffered traffic and transportation evidence in support of the proposal. Mr. Chan prepared a traffic impact study for the proposal. It is his opinion that the proposed 21 parking spaces are appropriate and will generate a minimal amount of traffic within this intersection. He gave the opinion that the traffic generated from this proposal will have no adverse impacts to the existing traffic capacity of Hurontario Street and Derry Road West. He gave the opinion that the two access/egress points are appropriate (Exhibit 11).

City of Mississauga

[12] It is the City's position that the subject site is at a prominent and key intersection. Hurontario Street is a higher order transit corridor for the City (and the Region) and there is a planned LRT system for Hurontario Street which is scheduled to be implemented by 2016. The proposal for a two storey motor vehicle repair facility is not consistent with the existing and planned context this area. They argue that the Proponent was well aware of the policies contained in the new OP which was adopted by Council (but not yet approved) at the time of the filing of its applications. They assert that the *Clergy* principle should be set aside and the new OP should be given considerable weight in assessing the Proponent's development applications. They assert that the proposal fails to meet the policies of the 2003 and 2011 OPs.

[13] The City's planner (Stephanie Segreti) and urban design expert (Michael Karowich) proffered expert planning and urban design evidence in opposition to the proposal (Exhibit 6).

[14] Ms. Segreti opined that the proposal at two storeys is incompatible with both the existing and planned context for Hurontario Street. The planned context for Hurontario Street is one of higher order uses that promote intensification. The site is located along a higher order transit corridor (Hurontario Street) and the LRT is planned to be

implemented in 2016. The proposed use is not a transit supportive development. It is auto dependent and is incompatible with the planned context for transit supportive, higher order uses such as multi-storey office buildings. The proposed site specific zoning standards including setbacks, buffering and parking spaces are not appropriate and inconsistent with the setbacks of the surrounding properties. There are existing transit stops in front of the site. The site design does not promote pedestrian friendly access at the intersection.

[15] Ms. Segreti testified that the proposed use as a motor vehicle repair facility is not permitted in the 2011 OP. The proposal does not conform to the 2011 OP with respect to use and built form. It is her opinion that the proposed two storey motor vehicle repair facility is not intensification under the 2005 PPS and the GP, nor is it consistent with the planned context of higher order uses along a future LRT corridor. It is her opinion that the proposal is not appropriate for the site and does not have regard for the GCCCA policies, and does not conform to the goals, policies and objectives of both the 2003 and 2011 OPs.

[16] Mr. Karowich opined that from an urban design perspective, the proposal fails to meet the Special Site 2 Gateway District Policy of the 2003 OP. The proposed built form does not meet the three storey minimum height requirement; it is not a prominent building; and is incompatible with both the existing streetscape and the planned context for Hurontario Street. It is his opinion that the proposed design does not have the appearance of a three storey building. He referred to the Ontario Building Code and the ZBL definitions of a storey. It is his opinion that the building functions as a two storey building and should be considered as such and not as a three storey building. It is his opinion that from a height perspective, the proposed height at 10.76 m including the parapet relates more to a two storey building.

[17] Mr. Karowich opined that the built form is neither prominent nor is it a high quality distinct building. It is his opinion that the proposed setbacks will not accommodate the proposed public boulevards along Hurontario Street and Derry Road West. The proposed access points are adjacent to existing and future transit stops and will not promote a safe pedestrian environment. The proposal in his opinion does not conform to the urban design policies of the 2003 OP.

1181482 Ontario Limited

[18] It is 1181482's position that a motor vehicle repair facility use is not permitted in the 2003 OP. It is their position that the applications must be tested against both the 2003 and 2011 OP policies. It is their position that the proposal fails to meet the intent of both Official Plans and it is not consistent with the intensification policies of the 2005 PPS. 1181482 supports the position of the City in its opposition to the proposal.

[19] Claudio Brutto, a qualified professional planner, opined that the subject site is located within a node. Motor vehicle repair is not a permitted use on lands designated as business employment that are within a node. It is his opinion that the applications should be reviewed against both the 2003 and 2011 OPs. The site is within an intensification corridor (Hurontario Street) and the proposed use as a motor vehicle repair facility is not a higher order intensification use that is transit supportive. It is his opinion that the proposed two storey motor vehicle repair facility is not consistent with the intensification policies of the 2005 PPS. The site is prominent given its location and the planned context for this intersection is one of office/corporate multi-storey developments that would be transit supportive. The proposal is not consistent with this planned context that is envisioned in both the 2003 and 2011 OPs.

[20] One participant (John Kanellopoulos) spoke in opposition to the proposal. Mr. Kanellopoulos owns the abutting property (7020 Hurontario Street) to the north of the site. He intends to develop a multi-storey office building on his lands and is of the opinion that the proposal would not be compatible with his development nor would it be compatible with the planned context of the Hurontario Street Corridor. The proposed development in his opinion would affect the development potential of his lands.

FINDINGS OF THE BOARD

[21] The Board considered all the evidence and submissions in making its findings which are detailed below.

The Determinative Official Plan

[22] The Board finds that it is the 2003 OP that is the applicable and determinative OP for which this development application must be tested against. The Board finds that City staff, in written correspondence, acknowledged that it was the 2003 OP upon which

the application was to be reviewed and that an OPA for use was not required. This was in the Board's view the consistent position of City planning staff in its staff reports.

[23] The Board finds that while it is the 2003 OP that is the determinative OP, regard must be given to the appropriate policies contained in the new 2011 OP. The 2011 OP was adopted by City Council prior to the filing of the Proponent's applications but appealed in its entirety to this Board. The Board finds that the Proponent was well aware of the City's planning vision and policies contained in the 2011 OP and the Hurontario/Main Street Master Plan at the time of the filing of its development applications in 2011.

[24] The Board finds that the subject lands are within the business employment designation of the 2003 OP and this designation permits the motor vehicle repair use.

Is it in a Node?

[25] The Board finds that the site is not in a Node as referenced in the 2003 OP. In this regard, the Board prefers the evidence of Ms. McPherson that there are Nodes identified in the 2003 OP land use maps. Auto repair uses are not permitted in Nodes. However the subject site is not within a Node. It is in a business employment district which permits the use being sought. The Board prefers the evidence of the Proponent's planner, that nodes referred to in the urban design manual are spoken to about generically. The Board notes that the urban design manual is a design guideline document and not a policy of the OP. Although it is a Council approved document, it does not carry the same weight nor does it have the statutory authority as an OP under the *Planning Act* ("Act"). It is also important to note that the Board recognizes that the urban design manual is a very useful tool for the City in implementing the planned context for Hurontario Street.

The Massing, Height and Scale

[26] The Special Site 2 Gateway District Policy of the 2003 OP states that:

built form at the corners of intersections should have prominence, occupy a majority of the street line and be a minimum of three (3) storeys.

[27] This policy applies to the subject site as it is within one of two intersections found in Special Site 2. It is the Board's view that whether the proposal meets this OP policy requirement forms the central issue at this hearing.

[28] The Board heard considerable arguments and evidence of what should determine the height (storey) of a building. Should it be the internal functionality or the exterior massing of the built form? The City's urban design expert argued that the internal functionality of the built form is as important as the exterior massing of the building. The City argued that the internal functionality of the building is tied to the minimum three storey requirement. Clearly the interior of the building contains a ground floor and a second floor. The City submitted that the Building Code and the ZBL definition of storey are important in assessing whether this proposal has a minimum building height of three storeys.

[29] On the other hand, the Proponent's experts argued that the urban design guidelines speak to how the buildings should relate to each other in terms of massing, height and scale along the streetscape of Hurontario Street. They argued that it is not about whether the building's interior functions as a two or three storey building. They argued that while the building will function as a two storey it has the exterior massing and height of a three storey building.

[30] The Board finds that both form and function are important considerations. However in this context, the Board has to look at the City's urban design guidelines in terms of what constitutes massing, height and built form. The Board finds that these design guidelines emphasize the exterior height, massing, prominence and the built form's contextual relationship with the streetscape and street line rather than its internal functionality. The City contends that a storey is defined in the City's ZBL and the Building Code and that the proposal does not meet the three storey requirement as defined in these documents. It is the view of the Board that how the building looks from the street is a more important consideration in accessing height, scale and built form than how it functions internally.

[31] The Board finds that when viewed from the street, the proposal will have the look of a three storey building. The Board finds that the exterior design features of this proposed building does have prominence and does occupy a majority of the street line. The proposal in the Board's view will be compatible with the existing and planned context for Hurontario Street. The Board finds that the proposed design (Exhibit 3C, Tab L) meets the intent of the built form policy found in Special Site 2 Gateway District Policy of the 2003 OP.

[32] The Board finds that the Proponent's planner, in her evidence, did have appropriate regard to the new 2011 OP. The Board prefers her planning opinion that while the 2011 OP does not permit the repair of motor vehicles within the Business Employment designation, it is similar to other uses permitted within this designation in scope and intensity. These uses include commercial parking facilities, motor vehicle body repair facilities, manufacturing and warehousing.

[33] The Board is not convinced by the City and 1181482 arguments that the proposal would not be compatible with the LRT proposed for Hurontario Street and the higher order uses (office) and transit supportive developments proposed for the Hurontario streetscape under the 2011 OP. All Parties presented visual photo studies of the existing streetscape along Hurontario Street in support of their positions. The Board finds that the existing context of Hurontario Street is characterized by both ground oriented commercial/retail establishments and multi-storey office buildings.

[34] The Board acknowledges that this streetscape will evolve over time under the 2011 OP and the planned context for this area will be for higher order uses such as multi storey office buildings, hotels and corporate type uses with a minimum height of three storeys. However, it is the Board's view that the proposed built form in terms of its massing, height and design would not be incompatible with the planned context for Hurontario Street.

[35] With respect to the final design of the building, the Board notes that the final design would be subject to the City's site plan review and approval process.

Proposed Zoning Standards and Access Points

[36] With respect to the proposed parking standards, the Board finds that the number of parking spaces to be appropriate. In this regard the Board accepts Mr. Chan's traffic study on parking standards and traffic impacts.

[37] However, with respect to the proposed two access points for the site, the Board is not convinced that two access points would be appropriate. Specifically, the Board has concerns with the proposed access from Hurontario Street given the amount of pedestrian activity that will occur on the public boulevard. In front of the site there is an existing bus transit stop and a proposed major transit stop for the proposed LRT on Hurontario. The Hurontario Street Corridor Development Policies of the 2003 OP (s.

4.15.3.2) provide for safe pedestrian movement from the public sidewalk, and giving priority to pedestrian movement when accommodating both pedestrian and vehicular traffic.

[38] It is the Board's finding that the proposed access point from Hurontario Street would not promote safe pedestrian movements given the existing and planned context for this area. The Board is mindful of the existing and anticipated pedestrian activity along this side of Hurontario. Pedestrian safety is an important consideration for the Board in these matters. In this regard the Board prefers the evidence given by the City's experts on the importance of the public boulevard and the movement of pedestrians at this prominent intersection. The Board finds that one access point (from Derry Road) would be sufficient and appropriate for the site. Appropriate screening at the flanking side of the subject property that fronts onto Hurontario Street is to be erected to screen the view of the parking area and the bays. The site access design and screening/buffering are to be finalized at the site plan review and approval stage.

[39] The Board finds the proposed setbacks and buffering as shown in the proponent's proposed site plan to be appropriate (Exhibit 3C, Tab L) with the exception as noted on the proposed access points.

Regard for Council's Decision

[40] Section 2.1 (a), (b) of the Act requires the Board to have regard to the municipal council's decision on this matter and any supporting documentation that council's reviewed in making its decision. Having regard for municipal council's decision was raised as an issue by the City. The Board in making its findings did review and had regard to council's decision on the Proponent's development application. As well, the Board reviewed the supplementary staff report dated March 12, 2013 which recommended refusal of the Proponent's OPA and ZBA applications. The Board also considered other planning staff reports and correspondence leading up to Council's decision to refuse the applications.

Conclusion

[41] It is for the aforementioned reasons that the Board finds that the proposal as submitted and detailed in Exhibit 3C, Tab L with the exceptions noted in this decision is appropriate for the site, meets the requirements of the Act, and represents good

planning. The City in its evidence and submissions asked that in the event that the Board found merit in approving the proposal that the uses permitted in the proposed site specific ZBA be restricted to “Motor Vehicle Repair Facility – Restricted”. The Board agrees with the request but will also add “Office” as the City had no objections to this use for the second floor of the proposal. The Board will direct the Proponent to revise the proposed ZBA accordingly.

[42] The Board finds that the proposed OPA and ZBA conform to the City’s 2003 OP, and are consistent with and conform to the provincial plans (2005 PPS and the GP).

[43] Therefore it is the decision of the Board that :

1. With respect to the OPA appeal, the appeal is allowed and the Official Plan for City of Mississauga is amended as set out in Attachment 1.
2. With respect to the ZBA appeal, the appeal is allowed in part and By-law No. 0225-2007 is amended in accordance with the findings of this decision. The Board directs the Proponent to revise the proposed ZBA found in Attachment 2 in accordance with this decision and in a form consistent with the standards of the City of Mississauga.

[44] The Board will withhold its Order pending receipt of the revised ZBA from the Proponent and confirmation that the OPA is in a form consistent with the City’s drafting standards.

“Jason Chee-Hing”

JASON CHEE-HING
MEMBER

ATTACHMENT 1

Amendment No. Amendment #
to
Mississauga Plan (Official Plan)
for the
City of Mississauga Planning Area

PURPOSE

The purpose of this Amendment is to amend Section 4.15.6.3 - Site 2, within the Gateway District Policies of Mississauga Plan (Section 4.15) in order to confirm the permitted uses and permit a built form of (2) storeys, with the appearance of 3 storeys, for a property at the north-west corner of Derry Road West and Hurontario Street.

LOCATION

The lands affected by this Amendment are located on the north-west corner of Derry Road West and Hurontario Street.

BASIS

The subject lands are located within in the Gateway District, and form part of Mississauga Plan (Official Plan). Mississauga Plan came into effect on May 5, 2003, save and except for those policies and land use designations which been appealed to the Ontario Municipal Board.

The lands are designated *Business Employment* which permits, among other uses, motor vehicle commercial uses. The site is further identified as Special Site 2 which includes the lands at the four corners of Hurontario Street and Derry Road.

The proposed Amendment is acceptable from a planning standpoint and should be approved for the following reasons:

The northwest corner of Hurontario Street and Derry Road East/West is a small vacant site. The confirmation of the proposed motor vehicle commercial use as a permitted use is appropriate given the existing automotive service uses on both the southeast and southwest corners and recognition of the continuation of these uses in the Official Plan.

The proposed height of two storeys is mitigated by the design of the building with higher floor-to ceiling than would be typically provided for by residential or commercial office use. Shorter building height in number of stories is offset by overall building height. Building is consistent with other form policies set out for the intersection.

DETAILS OF THE AMENDMENT

Section 4.15.6.3(f) is hereby amended by replacing the first bullet with the following:

- *built form at the corner of the intersections should have prominence, occupy a majority of the streetline and should be a minimum of (3) storeys or have the appearance of (3) storeys. The reconstruction of the service stations at the south east and south west corners of Hurontario Street and Derry Road East/West for motor vehicle commercial purposes and the development of the north west corner for motor vehicle commercial purposes may be permitted if it results in an improvement of the site by meeting the spirit and intent of this Plan by providing, for example, the massing, height and built form of a two-storey mezzanine building.*

IMPLEMENTATION

INTERPRETATION

The provisions of the Mississauga Plan (Official Plan), as amended from time to time regarding the interpretation of that Plan, shall apply in regard to this Amendment.

This Amendment supplements the intent and policies of the Mississauga Plan (Official Plan).

Upon approval of this Amendment, the various Sections, Appendices will be amended in accordance with this Amendment, subject to technical revisions being permitted to this Amendment without official plan amendments with respect to: changing the numbering, cross-referencing and arrangement of the text, tables, schedules and maps; altering punctuation or language for consistency; and correcting grammatical, dimensional and boundary, mathematical or typographical errors, provided that the purpose, effect, intent, meaning and substance of this Amendment are in no way affected.

ATTACHMENT 2

A by-law to amend By-law Number 0225-2007, as amended.

WHEREAS pursuant to section 34 of the *Planning Act*, R.S.O. 1990, c.P.13, as amended, the council of a local municipality may pass a zoning by-law;

NOW THEREFORE the Council of The Corporation of the City of Mississauga ENACTS as follows:

1. By-law Number 0225-2007, as amended, being a City of Mississauga Zoning By-law, is amended by adding the following Exception Table:

0.0.0.0	Exception:	Map #	By-law:
In a E2-___ zone the permitted uses and applicable regulations shall be as specified for a (E2) zone except that the following uses/regulations shall apply:			
Permitted Use/Additional Permitted Use/Use Not Permitted			
8.2.3 ___ (1) E2 uses contained in Subsection 8.2.1 of this By-law			
Regulations			
0.0.0.0.1	Uses contained in 8.2.3 ___ of this exception shall comply with the E2 zone regulations contained in Subsection 8.2.1 of this By-law except that:		
	(i) Minimum depth of a landscape buffer measured from any other lot line shall be a minimum of 1.5 metres		
	(ii) Minimum front yard setback shall be 0 metres		
0.0.0.0.2	Parking qualifications as indicated in Table 3.1.2.2, wherein a parking ratio of 4.3 spaces per 100 square metres of GFA - Non Residential for a Motor Vehicle Repair Facility shall be reduced to permit 23 parking spaces on site.		

2. Map Number _____ of Schedule "A" to By-law Number 0225-2007, as amended, being a City of Mississauga Zoning By-law, is amended by changing thereon from "(D)" to "(E2)", the zoning of (Part Lot 11, Concession 1), in the City of Mississauga, PROVIDED HOWEVER THAT the "(E2)" zoning shall only apply to the lands which are shown on the attached Schedule "A", which is deemed to be an integral part of this By-law, outlined in the heaviest broken line with the "(E2)" zoning indicated thereon.

3. This By-law shall not come into force until Mississauga Plan (Official Plan) Amendment Number _____ is in full force and effect.

ENACTED and PASSED this _____ day of _____ 2011.

MAYOR

CLERK

APPENDIX "A" TO BY-LAW NUMBER _____

Explanation of the Purpose and Effect of the By-law

This By-law amends the zoning of the property outlined on the attached Schedule "A" from "D" to "E2".

"E2" permits E2 uses, minimum of 23 parking spaces on sites, minimum landscaped buffer measured from any other lot line of minimum 1.5 metres.

Location of Lands Affected

Part Lot 11, Concession 1, in the City of Mississauga, as shown on the attached Map designated as Schedule "A".

Further information regarding this By-law may be obtained from _____ of the City Planning and Building Department at 905-615-3200 ext. _____.

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