

ISSUE DATE:

June 03, 2013



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL130172

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

Appellant:	David Serwatak
Applicant:	Tong Trinh
Subject:	Minor Variance
Variance from By-law No.:	6593
Property Address/Description:	677 King Street East
Municipality:	City of Hamilton
Municipal File No.:	A-284/12
OMB Case No.:	PL130172
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APPEARANCES:

Parties

Agent

Tong Trinh

Tuan Bui

David Serwatak

MEMORANDUM OF ORAL DECISION DELIVERED BY R. ROSSI ON MAY 23, 2013 AND ORDER OF THE BOARD

[1] David Serwatak ("Appellant") has appealed to the Ontario Municipal Board ("Board") the decision of the Committee of Adjustment ("Committee") that granted variances to Tong Trinh ("Applicant") in order to permit the existing two-storey building at 677 King Street East in the City of Hamilton ("City") to contain a total of two residential dwelling units and up to two commercial units. No parking spaces will be provided instead of the minimum requirement of two parking spaces.

[2] The Applicant seeks the following 5 variances:

1. Lot area of 202 square metres whereas the by-law requires a minimum lot area of 360 square metres.

2. Lot width of 10.0 metres whereas the by-law requires a minimum of 12.0 metres.
3. Proposed front yard setback of 0.0 metres whereas the by-law requires a minimum of 6.0 metres.
4. Proposed rear yard setback of 1.4 metres whereas the by-law requires a minimum of 7.5 metres.
5. No parking spaces proposed for the residential units whereas the by-law requires a minimum of two spaces.

[3] The City did not attend these proceedings.

[4] Tuan Bui represented the Applicant who does not speak English. Mr. Bui provided photographic evidence on his camera as well as a sketch of the proposed two rental units to be built above the ground floor commercial space. Also before the Board was the planning report recommending approval of the five variances.

[5] It was the uncontradicted evidence of City planning staff in its report on the proposed development and the five variances (on the Board's file) that the variances both individually and cumulatively meet all four tests for a minor variance as enunciated in s. 45(1) of the *Planning Act* ("Act") and the proposed development represents good planning and should be approved.

[6] The report indicated that the subject lands are designated "Commercial" on Schedule 'A' – Land Use Concept in the Hamilton Official Plan. The lands are also identified as "Commercial Apartment" in the Gibson Neighbourhood Plan. The lands are zoned "H" (Community Shopping and Commercial) District in Hamilton Zoning By-law No. 6593. What is especially important to note for the purposes of this hearing is that the variances in fact are technical in nature – reflecting the condition of the existing building, which requires the variances to recognize the existing conditions and for which the Appellant proposes to add one additional rental unit.

[7] As for the parking variance, the Appellant's principal concern related to the lack of on-site parking as proposed. He opined that prior to a fire that had occurred in the Applicant's building, a pizzeria had operated there and the pizza vehicles had occupied two metered parking spaces on the street. However, City staff noted that the variance for the reduction in parking maintains the general intent and purpose of the official plan

and zoning by-law since parking can be accommodated on-street for the residential units if required. Mr. Bui added that like other storefront properties, there is no parking on-site and the Applicant's previous rental unit above the commercial space has always been rented to persons who did not have vehicles. Moreover, City staff wrote that the variance for reduced parking is minor since the subject lands are located on a major transit route and the variance essentially recognizes an existing situation and accordingly, is deemed to be appropriate for the development of the lands by planning staff.

[8] As the Appellant offered little more than anecdotal information about how two metered spaces used to be used by staff of the Applicant's commercial space, and as he offered no planning evidence whatsoever to the Board, and as the only planning evidence before the Board was that contained in the staffing report on file which resulted in City Council's approval of the application, the Board finds persuasive the unchallenged and uncontradicted opinion of the City's planning department. It is also likely that given the Applicant's history of renting the previous single rental unit to persons without cars, similar persons who do not possess vehicles would be the likely renters of the two new replacement suites being built atop the commercial space. This is buoyed by the fact that there are overnight and rush hour parking restrictions on this section of King Street East, which would make on-street parking at peak and other times challenging and would require the renters to seek parking elsewhere. In any event, the uncontradicted of Mr. Bui is that renters without vehicles are the historical renters of the space and what is more, neither Hamilton Municipal Parking System (Parking System) nor the Traffic, Engineering and Operations Division expressed any concerns with the zero-parking reduction variance.

[9] As an interested participant, the Applicant's next-door neighbour, Ramolo Bozzo, expressed his desire that the Applicant's building, heavily damaged by an earlier fire, be restored as soon as possible as he would like to sell his property and retire (he lives at the rear of his commercial building and his building abuts the Applicant's building). Mr. Bui explained that the Applicant is currently seeking a building permit to renovate the damaged building in the manner prescribed through this application and this development scheme, with its corresponding variances if approved, will enable the Applicant to restore this older building.

[10] Having considered the uncontroverted evidence of City planning staff and noting that these variances are substantially technical in nature, and as the Appellant offered no planning evidence and he did not address any of the planning tests as set out in the *Act*, the Board determines that the minor variances are supportive of good planning principles and cause no negative or adverse impacts and they meet all four tests as set out in the *Act*.

ORDER

[11] The Board orders that the appeal is dismissed and the minor variances are authorized.

"R. Rossi"

R. ROSSI
MEMBER