

ISSUE DATE:

**August 09, 2013**



PL130223

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:	Snug Harbour Foods Inc.
Applicant:	Centre City Capital Limited
Subject:	Minor Variance
Variance from By-law:	0225-2007
Property Address/Description:	31 Lakeshore Road East
Municipality:	City of Mississauga
OMB Case No.:	PL130223
OMB File No.:	PL130223

**APPEARANCES:**

**Parties**

**Counsel**

Snug Harbour Foods Inc.	Gerald Swinkin
Centre City Capital Limited	Barnett Kussner
City of Mississauga	Marcia Taggart

**DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD**

[1] Centre City Capital Limited (“Applicant”) applied to the Committee of Adjustment (“Committee”) of the City of Mississauga (“City”) in January 2013 for minor variances to permit the construction of a below-grade parking structure and additions to the existing building at 31 Lakeshore Road East (“subject property”) for the development of a mixed use commercial building on the subject property. The City approved the application with conditions.

[2] The Applicant has requested the following revised variances:

[1] a building height of 15.00 m (49.21 ft.) measured from established grade to the top of the flat roof whereas By-law 0225-2007, as amended, permits a

maximum height of 12.50 m (41.01 ft.) measured from established grade to the top of the flat roof in this instance

- [2] 32% of the street wall to be set back greater than 3.00 m (9.84 ft.) from the lot line abutting Stavebank Road South whereas By-law 0225-2007, as amended, permits a maximum of 30% of the street wall to be set back greater than 3.00 m (9.84 ft.) from a lot line abutting a street in this instance
- [3] a westerly side yard of 0.00 m (0.00 ft.) whereas By-law 0225-2007, as amended, requires a minimum westerly side yard of 4.50 m (14.76 ft.) in this instance
- [4] interior (westerly) side and rear yard landscape buffers of 0.00 m (0.00 ft.) in width whereas By-law 0225-2007, as amended, requires a minimum landscape buffer of 4.50 m (14.76 ft.) in width along the interior side and rear yard lot lines in this instance
- [5] The following reduced based parking standards apply:
  - a. to permit a Real Estate Office and Medical Office at a rate of 4.85 spaces/100 sq m (1076.42 sq. ft.) gross floor area ("GFA") non-residential whereas By-law 0225-2007, as amended, requires parking for these uses at a rate of 6.5 spaces/100 sq m (1076.42 sq. ft.) GFA non-residential in this instance
  - b. to permit Financial Institution at a rate of 4.85 spaces/100 sq m (1076.42 sq. ft.) GFA non-residential whereas By-law 0225-2007, as amended, requires parking for these uses at a rate of 5.5 spaces/100 sq m (1076.42 sq. ft.) GFA non-residential in this instance
  - c. to permit Retail Store and Personal Service Establishment at a rate of 3.0 spaces/100 sq m (1076.42 sq. ft.) GFA non-residential whereas By-law 0225-2007, as amended, requires parking for these uses at a rate of 4.0 spaces/100 sq m (1076.42 sq. ft.) GFA non-residential in this instance



- [7] four parking spaces having a width of 2.50 m (8.20 ft) whereas By-law 0225-2007, as amended, requires a minimum parking space width of 2.75 m (9.02 ft) in this instance
- [8] no loading space provided on site whereas By-law 0225-2007, as amended, requires a minimum of one loading space to be provided on site in this instance
- [9] an outdoor patio to be operated ancillary to a restaurant use accessible from the first storey of the proposed commercial building whereas By-law 0225-2007, as amended, does not permit an outdoor patio ancillary to a restaurant use on the subject property in this instance
- [3] Four conditions are attached to the approval:
- [1] there shall be no reserved or specifically designated parking spaces within the underground parking structure save and except parking spaces for persons with disabilities
- [2] there shall be a maximum GFA of 3,735.26 sq m (40,207.31 sq. ft.)
- [3] there shall be a maximum GFA – Restaurant of 670 sq m (7,212.05 sq. ft.)
- [4] the applicant shall complete a Payment-in-Lieu (“PIL”) of Off-Street Parking application for the remaining parking deficiency
- [4] In accordance with s. 45(18)1.1 of the *Planning Act* (“Act”), the Board determines the amendment to the original application to be a minor one and no further notice is required.
- [5] Snug Harbour Foods Inc. (“Appellant”) has appealed this matter to the Ontario Municipal Board (“Board”). The Appellant leases the City-owned property at 14 Stavebank Road South (“site”) and operates a restaurant in the building. This site is south of the subject property and is part of the marina area. The Appellant’s planning witness Ted Davidson spoke to some of the variances but his evidence centred on the Appellant’s principle concern: the impact the Appellant perceives will be created on its restaurant business from the Applicant’s variance for the reduced base parking

standards. Specifically, the Appellant is concerned that if patrons and customers of the subject property are not provided with sufficient on-site parking in the proposed underground parking garage, they will elect instead to park in the free, municipally-owned parking lot located near the Appellant's restaurant, thereby taking away parking spaces from its restaurant customers.

[6] The Board granted interested participant status to the following three persons who spoke in favour of the proposed development: Ellen Timms, General Manager of the Port Credit Business Improvement Area ("PCBIA"), business owner John Bozzo and Don McVie, former member of the unincorporated Port Credit Ratepayers Association. The Board granted interested participant status to a representative of an unincorporated residents group who spoke in opposition to the proposed development: Dorothy Tomiuk of the Town of Port Credit Association ("TOPCA").

[7] The City approved the application with conditions and the City was a full and active party to these proceedings. All sides have set aside natural heritage matters and the Board noted on its file, a December 3, 2012 letter from Credit Valley Conservation ("CVC"). The CVC reviewed the application and stated: "...it has been determined that the proposal is set back sufficiently from any natural feature and that we have no concerns with the proposed variance as it does not affect CVC interest. CVC has no objection to the approval of this application...."

[8] The Applicant's planner Franco Romano and the City's planner Ben Phillips spoke in support of the application, as did the City's transportation planner Ralph Bond. As noted, Mr. Davidson spoke in opposition to the application.

[9] The subject property is located at the southwest corner of Lakeshore Road East and Stavebank Road South in the heart of Port Credit. It has no other private property neighbours and there are City-owned lands on its south and west boundaries. This site sits at the entrance to the marina and abuts the harbour and the Credit River. The site is irregularly shaped and the topography is such that the property slopes downward east to west from the street intersection to the river. The cross section of the proposed building (Exhibit 2, Tab 18, p. 390) shows how the proposed buildings two and three-storey components will sit atop the sloped land. The third storey responds to the below-ground condition that limits underground parking construction to two levels and that will provide office uses in the third-floor component.

[10] Mr. Romano reviewed the variances in the context of the four tests as set out in s. 45(1) of the *Act* and he opined that all of the tests are satisfied through the proposed development. It was Mr. Romano's opinion that the variances maintain the general intent and purpose of the in-force and under-appeal Plans. The Mississauga Official Plan ("MOP") (under appeal) places the site in a Community Node and Policy 5.5.10 of MOP encourages secondary office development to locate within Community Nodes. The property is located within a Mixed Use area and is sited along an Intensification Corridor. Section 9.1 of the Urban Form policies direct growth to this area as well.

[11] MOP also designates the site as "C4 Mainstreet Commercial". Policy 2.1.2.6 directs that, in accordance with the Port Credit Parking Policies, "where possible, parking for this area should be provided on-street or in small, distributed parking lots." This policy is achieved. Mississauga Plan ("MP") also designates the area as a Node. The Port Credit District Land Use Map designates the site as "Mainstreet Retail Commercial".

[12] Compact, mixed use development such as what will be provided is encouraged in the Official Plan. The proposal also offers building heights of both two and three storeys; heights that are encouraged in the Official Plan. The post office building will be retained (and preserved as per City Council's direction) and a new, modern glass-themed structure will share its westerly wall. Heritage officials directed that development of this site should not mimic the historic elements of what is being preserved so that the retained heritage element can be celebrated. The City, the Applicant and the majority of interested participants approve of the design as proposed.

[13] Mainstreet Commercial area development is predominantly of the two-storey variety and most are of an older style comprising office, residential and commercial uses. There is an abundant mix of built form styles. Mr. Davidson claimed that the massing and height are inconsistent with other built forms along this stretch of Lakeshore Road and through the Port Credit mainstreet area. Mr. Romano's unshaken evidence is preferred by the Board in that he noted examples of other two-storey buildings along Lakeshore Road East that, by virtue of their topography and/or construction style, also present as three-storey structures. There is in fact an undulating height to the facades of those buildings along Lakeshore Road East; something that is being achieved on this site with the two and three-storey components

and that the Board determines will integrate well with the fabric of the existing streetscape. Further, the City approved this latest iteration of the design as presented and the Board has no concerns with a building like this, which responds to the Municipality's requirement for two and three-storey built forms along this Intensification Corridor.

[14] As stated, Mr. Romano opined that the proposal and the variances maintain the general intent and purpose of MOP and the in-force MP with regard to land use, built form and heritage. The Parking Policies in MOP are also satisfied through the proposal's encouragement of shared use parking (parking on sites throughout the area) and off-site parking. The reduction in minimum parking requirements are proposed to reflect transit service levels. The planner noted an established traffic evidence adage; that one does not plan for the maximum amount of parking required in a peak period – a point espoused by the only traffic expert in this case, Mr. Bond – and concurred with by Mr. Davidson through cross examination by the Applicant's counsel Barnett Kussner.

[15] In terms of the Zoning By-law, the site is zoned "C4 Commercial" – a designation that applies primarily along the Lakeshore Road corridor. This designation recognizes a different level of activity and density than what one finds elsewhere. This proposal achieves a low-rise, mixed use building that will fit on its site within its context and that is appropriately serviced. The general intent and purpose of the Zoning By-law is maintained through a low-rise building that will offer a mix of uses that the by-law permits and that complements the existing urban fabric along Lakeshore Road East. Further, the by-law makes no distinction as to the built form to be provided and there are no applicable site-specific provisions or regulations.

[16] In reviewing these variances, Mr. Romano noted that three storeys are permitted as of right and this proposal meets the low-rise intent and built form character of the area. It was pointed out that current by-law standards would in fact allow a larger structure than what the Applicant proposes to build and a peaked roof a full meter higher than the absolute maximum the Applicant has planned for at 15 metres. The street frontage variance simply responds to the curvilinear nature of Stavebank Road; no variance is required for Lakeshore Road East. In essence, the variance simply responds to an existing condition and is deemed by the Board to be technical in nature.

[17] The west side yard variance relates to the side yard buffer variance. The variances recognize an existing condition. The general intent here is to maintain appropriate side yard relationships to the adjacent City-owned open space and this has been achieved through the proposal.

[18] Mr. Romano opined that the variance for the reduced parking standard is appropriate, relative to the site and area context and parking supply is sufficient, satisfying reasonable demand for the property given its mainstreet character and mixed use format. He also relied on the transportation planning evidence of Mr. Bond in this regard. Given the parking analysis presented below and the existing site context (wherein the existing building occupies much of the site and provides a maximum of ten spaces on site), the Board finds persuasive Mr. Romano's point that the introduction of similar mixed uses or even a use of one variety has the potential to create a larger parking deficiency than the one proposed in this case. As for the four reduced-size parking spaces, they are proposed to be sited adjacent to disabled parking and provide more than enough room for persons to enter and exit their vehicles, thereby maintaining the general intent and purpose of the Zoning By-law.

[19] Where the Applicant fails to provide a loading space on site, both Mr. Romano and Mr. Phillips advised that it is common in these types of buildings to either make use of short-term parking or to use the municipal right-of-way for loading. The City has no concerns with the proposed loading scheme. The Board also heard that the Appellant makes use of its driveway, albeit on-site, to facilitate loading at its restaurant.

[20] As for the outdoor patio variance, the City does not permit patios as of right, requiring all restaurants to apply for a patio use. There are many restaurants in the area and many have patios for use during the warm summer months. There is no zoning category to allow for patios and all require Committee approval. The Committee utilizes this review process to determine the appropriateness of permitting the use. In this case, the ground-level restaurant proposes a seasonal patio use and the City takes no issue with the use.

[21] The variances are desirable for the appropriate development of the subject lands. Mr. Romano noted that many public and private interests are achieved through the proposal and the test is satisfied. First, the re-purposing and protection of heritage elements of the post office building are important component of the test. The proposal



will also result in a better and safer alignment of the Lakeshore Road and Stavebank Road intersection – a site of much concern in the area. The CIBC bank, located in a nearby building, has signed a lease with the Applicant to move into the new premises. The proposal will also facilitate the future alignment and development and bank's relocation. The proposal will also accommodate contiguous office space in the Port Credit area, something that the majority of interested participants were very interested in seeing occur to revitalize the area. The mix of land uses will also reinvigorate the intersection. Mr. Romano also noted that going from an existing property that offers little to no parking today to one that increases the overall available number of parking spaces by 83 is not only desirable – it is significant in that the parking will be made available to the community as a whole.

[22] Finally, Mr. Romano opined that while the zoning requires 155 spaces and the Applicant proposes to offer 83 spaces or roughly 53%, numerically, this variance must be put into context. The actual parking requirement for the area is less than 155 parking spaces because the Zoning By-law parking standard applies city wide. He stressed that the conditions in one area are not necessarily the same considerations in another area and certainly not in this area-specific context. The Board finds persuasive his and Mr. Bond's evidence that the parking standard could in fact be higher or lower depending on where one looks. In this case, however, both experts advised the Board that a lower rate should apply here.

[23] Mr. Romano opined that the proposed variances create no unacceptable adverse impacts on the immediate and surrounding area and the magnitude of these variances is appropriate given the physical context of the site. He recommended the conditions for approval as presented.

[24] Mr. Phillips, a Development Planner with the City, adopted the planning evidence of Mr. Romano. Mr. Phillips has had carriage of this file from its inception and in fact his role pre-dated the submission of the latest application. Mr. Phillips also provided planning evidence and his opinion that the proposed development satisfies the four tests as set out in the *Act*. He opined that the proposed development is what the City has been looking for in respect of this site. The proposal complies with the City's policies pertaining to transportation and the City's direction to reduce dependency on the car and to diversify the transit split. It also meets the City's zoning standards,

observing that while the Applicant seeks a variance because the height exceeds the by-law performance standard, it has not in fact exceeded the absolute maximum in terms of the building's overall massing. Visually, he opined that the Applicant proposes to build a structure lesser in height than what could be built without a minor variance.

[25] As for the 0-metre wall variance, this is for one small portion of the wall at the northwest corner of the building that addresses the presence of an underground vent and retaining structure. Mr. Phillips noted that the 1.5 metre to 1.6 metre setback is otherwise similar to that of the existing floorplate of the post office. The new building presents a "good relationship" with the park and creates no issues. By extension, the variance for the landscape buffers for the low-level of landscaping found to the south of property creates no issues and in fact there is already a building that exists south of the property. He opined that an appropriate interface with the park is achieved.

[26] Mr. Phillips also explained that the City supports Mr. Bond's parking study and his presentation of the time-of-day percentages and parking figures, noting that there is no absolute number. He explained further that the City did not simply decide to support a reduction in the parking standard to 83 spaces. Rather, it accepted planning staff's recommendation to reduce the applicable parking standard from 155 spaces to 117-120 (representing a 25% decrease in the numbers) and to look at the 34-37 space deficiency through its Payment In Lieu (PIL) Program. The premise of the City's PIL Program, in existence since 1998, is that applicants will pay funds in lieu of the number of spaces they are deficient. The City maintains a PIL fund worth approximately \$2.5 million, which has yet to be expended on new parking.

[27] The Board also heard that the City is currently examining the Applicant's PIL application. Should the Board find favor with this proposal, Council is likely to support the PIL application. In any event, the City's planner noted that there is a sufficient amount of municipal parking lots and on-street parking as well as overall parking in the area to address a deficiency of 34-37 parking spaces. Mr. Phillips noted that this analysis is embedded in the PIL formal report. The Board accepts that the PIL process is the appropriate, customary and accepted way to address parking shortfalls in the City.

[28] Among Mr. Phillips' general comments were the following: the retention of portions of the 1931 façade achieves the economic goals of the Official Plan and

provides for a balance of population and employment in the Port Credit Node. The development also revitalizes a key site that is part of the main gateway to this area and is in fact sited along the most vibrant portion of Lakeshore Road East. He opined that the variances are minor in nature, cautioning that any redevelopment of the site would necessitate some number of minor variances. He noted that there are no inordinate, unacceptable or adverse impacts caused by these variances and there are no servicing issues.

### **Parking**

[29] The supporting planners opined that the issue of parking has been addressed satisfactorily through the proposal's achievement of the parking policies in MOP. They relied on the evidence of Mr. Bond that there is sufficient parking supply in the immediate and surrounding area. Through the variances, they opined that the amendment of the parking requirements as well as the application of a new peak period parking formula represent good planning.

[30] Mr. Davidson, who is not a transportation planner, painted a vastly different picture of the parking conditions in Port Credit from that of Mr. Bond's expert evidence. Mr. Davidson situated his criticism in the context of the existing zoning standards, commenting that the Applicant should not be introducing new parking standards in the absence of a finalized parking strategy for the City. To implement these figures would ignore the planning process and the inclusion of the general public in the determination of what parking standards should be applicable in the Port Credit Area. He also commented that the City has made no increase in available City-owned or operated surface or other parking in the immediate area despite charging fees since 1998 through the PIL Program.

[31] Mr. Bond authored the 2013 City of Mississauga Parking Strategy – Phase II, Port Credit & Lakeview (Exhibit 3). Among other things, the Request for Proposal (RFP) for Phase II called for the development of a comprehensive parking management strategy for the Port Credit Planning District and the development of strategic parking policies for the Lakeshore Road East Corridor through the Lakeview Planning District. The study surveyed the on-street and public and private off-street parking facilities in Port Credit in order to provide a profile of occupancy for both weekday and weekend parking demand. Two days were surveyed on a mid-October 2010 weekend and

selected in consultation with City staff and the study steering committee on the basis that they were reasonably representative of typical recurring parking conditions excluding peak special events. Follow-up spot counts were undertaken again in May and June 2011. The study reports that there is currently sufficient public parking in Port Credit with approximately 475 vacant public municipal parking spaces available during the peak times but it recommends the City “actively plan to provide additional public parking in order to facilitate future development.” A full reading of the study’s recommendations for the Port Credit area is found in Tab 3 of Exhibit 3. It reported that the parking demand and utilization surveys indicate that the existing parking supply in Port Credit is sufficient to meet the typical weekday and weekend demand. No parking shortages were identified and anecdotal experience suggests that currently, there are no significant parking supply problems in Port Credit.

[32] Mr. Davidson expressed a concern that Mr. Bond’s timing of surveys of parking usage in this area. Mr. Swinkin criticized the period of time as unreflective of the Appellant’s needs. Mr. Bond responded that the methodological guidelines were developed a considerable number of years ago in a suburban environment. His firm was guided by the character of this area of Port Credit as a designated mixed use environment where people are able to rely on shared private and municipal parking. He added that it is not typical to do a study in the peak summer period where the June to September period might represent ten percent of all of the days in a year. And as the Board heard from all professional witnesses, while there are peak demand periods, one does not plan and build parking to accommodate either the worst or best 10% peak periods. Rather, one plans for the middle 80%. It was also pointed out by Mr. Kussner in his submissions and during his cross-examination of Mr. Davidson that at the Appellant’s busiest evening period, its parking situation would likely not be impacted by the new uses, which, other than the restaurant, operate during daytime hours. Like the transportation planner, Mr. Davidson gave evidence that variations in parking usage throughout the year require a balance to be made in the provision of parking. Like the other planners and Mr. Bond, he too opined that one must survey both the peaks and valleys in parking lot usage to determine the need.

[33] Mr. Davidson’s characterization of the area supply of parking as insufficient and the practice of offering shared parking as problematic was presented as anecdotal evidence only. He cautioned that many surface lots have spaces set aside 15-hour time

limits for local residential parking (parking shortfalls for residential built forms along Lakeshore Road East and for tenants above stores). Other lots and garages have reserved and dedicated parking. The Board considered this information in the context of the parking tome presented by Mr. Bond and the detailed analysis he conducted. In this context, the Board cannot assign any weight to Mr. Davidson's comment that the evidence has not sufficiently reviewed either the parking requirements for the area or the parking deficiency.

[34] Mr. Davidson cited the prematurity of this application given that its PIL application was still being assessed by City staff and the broad parking strategy had not yet approved by the Committee. The issue of prematurity is assigned no weight by the Board. To accept that the presentation of revised parking requirements is premature would have the effect of sterilizing the land from development and suspend a process – the PIL Program – that has operated successfully in addressing parking shortfall situations in spite of a lack of a comprehensive parking document.

[35] Moreover, the presentation of reduced parking requirements on site are supported by the very author who has recently submitted the Phase II Parking Strategy to the City to begin its comprehensive planning review process – one that will involve public input. As noted by several witnesses, one should not freeze the process because another process is occurring. If the City wishes to impose conditions on development, it will do so when considering revised parking requirements and formulae. When the Applicant's PIL application comes forward, the City will consider whether it can go forward or it might choose to wait until the broader parking study process is finalized. The latter will, in no small part, inform the City's future direction of parking supply and demand but until that time, there are no good planning grounds to stall current development proposals and in particular one that finds favor with the Municipality, the experts, the business community and a majority of citizens alike. By extension, conditions dealing with the PIL application and Council's authorization of the application, both in substance and purpose, is no different from any other conditions – such as site plan approval – that accompany developments that require variances. It is also evident to the Board that the PIL Program is a common process through which the Municipality can vary parking requirements for development applications. Its success and operation are not dependent upon an in-force parking strategy.

[36] While addressing the matter of PIL applications, first, the Board noted that the magnitude of variances in Mr. Davidson's collection of previous PIL applications consisted of small variances, sometimes one to two spaces. This does not tell the entire story, however. The Board also considered evidence that across the street from the subject property, an expansion of the Pump House Grille Restaurant site led to a parking requirement of 31 spaces overall. Yet, the proposal sought and obtained approval for acceptance of a shortfall of 28 spaces, leaving a net figure of just 3 on-site parking spaces. The balance of spaces was accepted as PIL payment for off-site parking. As in that case, the City was satisfied the shortfall could be accommodated. When compared to this case, that site was providing just over 10% of the amount of parking required; this proposal will retain over 50% of what is required. Thus, in terms of magnitude, Mr. Davidson's distinctions between the two sites were assigned very little weight.

[37] Second, despite Mr. Davidson's attempts to distinguish the application of the City's PIL Program between expansions of existing uses versus new uses, the Board needs only to review the City's Corporate Policy and Procedure document on the PIL Program (Exhibit 6) to see that "New Development, Redevelopment and Addition to Existing Building and/or Structure" is explicitly permitted.

[38] Third, Mr. Kussner's brief of authorities presented persuasive examples of the City's approach to allowances for varied parking configurations, standards and requirements. He also showed where higher numbers than those proffered by Mr. Davidson and even by the proposed development have been approved by the City. For example, this practice finds expression in a 2005 decision of the Committee that approved amendments to the parking requirements in Port Credit as well as a new peak period parking formula. In late-2012, the Committee approved the expansion of the Pump House Grille Restaurant into an adjacent building and significantly reduced the parking requirement on-site to 3 spaces with PIL payments made for 13 other spaces where 31 spaces would have been required under the By-law. And in early-June 2013, the Committee approved a minor variance that sought a reduction in the provision of 418 parking spaces to 281 parking spaces.

[39] The Board was not persuaded by the urgency of the Appellant's concern with parking impacts. It recently renewed its lease for the continued restaurant use early for

another ten years. This early renewal lease agreement offers no warranties or guarantees for parking supply.. And, despite the central concern with the Applicant's parking variances, the Appellant chose not to call a transportation planner to give evidence in this case. By extension, Mr. Davidson, who is not such an expert, also confirmed that the Appellant sought out the early renewal lease agreement without a demand for reserved parking and was content to proceed with another ten-year lease agreement on a verbal assurance that parking would be available. Further, Mr. Davidson confirmed that the Appellant has not undertaken a needs assessment for parking for its employees or taken steps to free up parking for its patrons.

[40] The Board determines there is no issue of prematurity with regard to Council's consideration of the Applicant's PIL application in advance of the development, approval and implementation of a comprehensive parking strategy. Council itself could exercise its own power and discretion to deem the Applicant's PIL application to be premature. In the context of the in-force planning instruments and the City's capacity to consider PIL applications in the absence of a broad parking strategy, however, the Board assigns no weight to such an argument.

[41] Mr. Bond's study's final conclusions (Exhibit 3, Tab 10) note that the existing public parking supply is sufficient to meet the current peak parking demand in the area and there is no need to provide any additional public parking in Port Credit in the short term (less than five years). Further, not only does the study cite a potential" need to provide an additional 200 public parking spaces in the Port Credit Node area in the future, it also provides some eight locations in item 10.1.3 of the study, which does not include the redeveloped subject site through which the Applicant proposes to add 83 new parking spaces to the mix of available parking options in the area.

[42] In essence, the best evidence before the Board is that, in this immediate and broader area, parking supply can outpace demand during a few peak periods of the year, but not substantially more than the 34-37 shortfall. The objective evidence does not bear out this argument. City planning staff has recommended that 117-120 spaces would be required for this development. The Committee granted relief for the provision of that number whereas the Applicant proposes to offer 83 spaces in its two-level underground garage. The deficiency of 34-37 spaces would be addressed through the Applicant's PIL application and Mr. Bond opined that, after having carried out his

exhaustive two-phased study of City-wide parking conditions and his area-specific analysis, the 34-37 additional spaces can be accommodated easily through on-street and off-street (both free and paid) parking facilities.

[43] In the context of this proposal, the Board reviewed MOP's Parking Policies contained in s. 8.4. As per Mr. Bond's evidence, all of the relevant policies are met. The specific direction in all of these policies that relates to the proposed development is achieved with particular reference to the following excerpts: the Introduction, where parking is to be provided in structured – "preferably underground" – parking facilities; Policy 8.4.1 directing off-street parking facilities to be provided; Policy 8.4.2 and the City's encouragement of shared use parking; Policy 8.4.3 and the reduction of off-street parking as a means of encouraging the greater use of transit, cycling and walking, subject to, among other matters, to d.: impact on the surrounding area. The proposal includes a two-level underground garage that meets these requirements and as Mr. Romano noted, will add 83 additional parking spaces to the area – not take away from the existing parking supply which the City, its transportation planner and the Applicant's planner all say is sufficient for the area.

[44] Policy 8.4.5 notes that when an application proposes to provide parking through the PIL process in an area where limited or no municipal parking facilities are available, the City will have regard for five criteria, which the Board determines are met by this proposal. The Appellants failed to establish that this is an area with limited parking supply. On the contrary, the only traffic expert at this hearing presented evidence of a great deal of local and area parking. The City provides public parking facilities throughout the immediate and surrounding area and the Board finds that there is no adverse impact by providing a lesser number of on-site parking spaces than a City-wide parking standard suggests, and which the Board heard is not an appropriate standard to which the Applicant's proposal should be held. While there is a deficiency in the total number of spaces, the combination of reduced parking spaces and a successful PIL application achieves the policy direction evidence in Mr. Bond's study. At the end of the exercise, the 34-37 spaces are easily accommodated on the surrounding lots – not just on a single lot next to the Applicant's restaurant.

[45] The proposal also achieves Policy 8.4.7 g whereby the City is currently undertaking a formal parking strategy consultative process to examine what the policy



requires: “a surface parking reduction strategy that will ensure the layout of the parking lot and buildings will allow for future development.”

[46] The aerial photo in Exhibit 2 Tab 24 also confirms visually that there is sufficient public parking available in the immediate and surrounding area to meet the regular and peak period parking demands. In this context, the Board does not consider it unreasonable for the Applicant to be seeking fewer and smaller parking spaces on a site that can accommodate two levels of underground parking and most notably where it is situated in an area with an abundant supply of both public and private parking available. Moreover, the Board heard that the parking supply is also more than adequate to supply the expected demand with the uses in the building. Also, the Board heard that the resulting parking deficiency is smaller than what can currently be provided today.

[47] Mr. Bond’s methodological details were clear and uncontradicted through cross examination. He explained persuasively how his client arrived at its proposed reduced parking requirements and he showed how existing City-wide standards did not work well here and in fact caused the Applicant (and any other application that might come in) to be forced to provide more parking than is actually required for the area. In any event, while the proposed on-site parking supply will be deficient, it is not by an unacceptable amount as the Board was shown.

[48] As for the proposed range of uses, Mr. Bond opined that peak parking demand would occur around the noon hour on weekdays when occupancies for the bank and office operations will be at their highest. However, the Appellant’s peak demand is evenings and on summer weekends. Mr. Davidson confirmed that 75% of the Appellant’s business occurs between May and September. As for the evenings and weekends, the Applicant’s proposed uses would not be operating at full capacity during those periods.

[49] Mr. Bond was the only transportation expert to testify. The Board accepted his evidence and analysis and determines that his analysis and conclusions were reasonable, credible and bore scrutiny from the opposing side. His transportation evidence serves as the best evidence for acceptable impacts related to parking supply, parking demand and the actual requirements for the area as these relate to the proposed uses for this site. It was his preference to analyze, apply, test and ultimately

recommend a revised parking standard that is borne from actual parking demand and not from a City-wide standard. In doing so the correct number of spaces required is 117-120 parking spaces – spaces that are captured through a combination of 83 spaces to be constructed and the remainder covered in the PIL application. There is a sufficient supply of on and off-street subject to the City's approval of the Applicant's PIL application and no adverse parking impacts are created.

[50] The Board further accepted as persuasive Mr. Bond's evidence that current zoning standards for parking are out of date. It also finds persuasive his evidence that those standards might have application in the suburban environment but their utility lessens in the downtown, mixed use environment of this area of Port Credit. What was particularly noteworthy is that Mr. Bond's analysis does not derive solely from a site or area-specific analysis; rather, it was part of his comprehensive analysis of parking throughout the City for the purposes of updating and establishing a new parking strategy for the City.

[51] The Appellant has placed great weight on the matter of parking impacts yet it presented no professional transportation evidence to support its case. The opinion of its land use planner was more observational in tone and at times lacked issue-specific supporting evidence and persuasive content. Further, their planner was limited by the amount of on-site information he had on which to base his commentary on the precise parking numbers let alone matters of use and surrounding impacts. Given the majority of the planning witnesses supported the transportation evidence, as did a majority of the business-minded interested participants, his opinion was unpersuasive about impacts. Moreover, the early lease renewal agreement that the Appellant has signed shows clearly that, while parking nearby is provided, there are no warranties or guarantees offered as to the precise location and number of parking spaces for the leased premises.

[52] It is a rare instance when an Applicant presents a development proposal that not only meets the requirements of the City's vision for preservation of a site's heritage component and for mainstreet development that responds to the planning context, but also one that receives favorable support from the majority of participants including the local business improvement association, a local business owner and a past member of

a local ratepayers group. The Board concluded that the opposing planner's evidence was out of step with the planning context.

[53] The Board determines that the proposed variances satisfy all four tests of the *Act* and they create no adverse impacts on immediate and surrounding community.

**ORDER**

[54] The Board orders that the appeal is dismissed. The Board authorizes the minor variances subject to the above-cited four conditions as contained in Exhibit 4.

"R. Rossi"

R. ROSSI  
MEMBER