

ISSUE DATE:

January 17, 2014



PL130553

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:	Mark Giardetti
Applicant:	Rajwant Grewal
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	6, 10 & 12 Queen Street South
Municipality:	City of Mississauga
Municipal File No.:	A101/13
OMB Case No.:	PL130553
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APPEARANCES:

Parties

Mark Giardetti
Rajwant Grewal

Counsel

J. E. Streisfield
I. Collins

DECISION DELIVERED BY R. G. M. MAKUCH AND ORDER OF THE BOARD

[1] The Applicant, Rajwant Grewal, wishes to construct a two-storey retail and office building on the subject property and received authorization from the Committee of Adjustment ("Committee") for the following variances to allow her to proceed with construction:

- 1) To permit a landscaped buffer width of 0.40 m along the westerly lot line, whereas the zoning by-law requires a minimum landscape buffer width of 4.50 m;
- 2) To permit a front yard setback to the proposed stairs of 0.78 m, whereas the zoning by-law requires a minimum front yard of 4.50 m.

[2] This authorization was appealed by Mark Giardetti, who has an interest by way of an agreement of purchase and sale in the abutting properties to the west of the subject

lands. The intent according to Mr. Giardetti is to develop the lands for residential purposes and alleges that reducing the width of the minimum required landscape buffer will negatively impact his proposed development.

[3] The evidence before the Board on this appeal consists of the oral testimony of Yaso Somalingam, the agent for the owner as well as the evidence of Mark Giardetti, the Appellant herein.

[4] It must be noted that an appeal to this Board pursuant to s. 45 of the *Planning Act* ("Act") is a hearing *de novo* and the onus of establishing that the four tests under s. 45(1) of the Act have been met and remains on the applicants notwithstanding that the committee approved the application. The four tests under s. 45(1) of the Act, require the applicants to satisfy the Board that the variances:

- 1) Maintain the general intent and purpose of the official plan;
- 2) maintain the general intent and purpose of the zoning by-law;
- 3) are desirable for the appropriate development or use of the land building or structure; and,
- 4) are minor.

[5] The Board in making its decision on this appeal is also bound by s. 2.1 of the Act, which provides as follows:

When an approval authority or the Municipal Board makes a decision under this Act that relates to a planning matter, it shall have regard to,

- a) Any decision that is made under this Act by a municipal council, or by an approval authority, and relates to the same planning matter and
- b) Any supporting information and material that the municipal council or approval authority considered in making the decision described in clause (a).

[6] While this is a hearing *de novo*, the Board is nevertheless bound to have regard for the Committee's decision dated May 2, 2013, when it authorized these variances. It is also bound to have regard for the City of Mississauga ("City") Planning Department planning reports dated March 15 and April 19, 2013, considered and relied on by the Committee in arriving at its decision respecting the subject variances. Accordingly, the

Board takes judicial notice of the Committee's decision in this matter as well as the planning reports referred to above.

[7] Furthermore, the Board must often rely on its own expertise to make determinations relating to the public interest notwithstanding that it did not have a professional witness before it when hearing an appeal and the Board is satisfied based on all of the evidence before it that the above referred to four tests under s. 45 (1) of the Act have been met and that the subject variances should be authorized for the reasons that follow. The subject property is designated "Mixed Use" in the Mississauga Official Plan and is zoned "C4-38", Mainstreet Commercial under Zoning By-law No. 0225-2007.

[8] With respect to Variance #1, the desired reduction in the width of the landscape buffer is required to accommodate the parking provisions required under the zoning by-law. The Board finds this variance to be minor. While the Appellant alleged that this variance would impact the future development of the abutting lands, he did not adduce any concrete evidence as to any impacts on these lands other than suggest that it could have an impact.

[9] The Applicant has redesigned a portion of the landscape buffer to allow for a larger planting area and improved grading. It would be partially elevated to provide curbing for the adjacent parking spaces and that a wooden privacy fence would be installed along the lot line to attenuate noise and to provide privacy to the adjacent properties. The Board is satisfied that an appropriate amount of landscaping such as trees and shrubs would be installed along the buffer to provide adequate screening. It is noted that the Applicant has made an application for site plan approval from the City and concerns have not been raised by the City on this issue.

[10] The Board is also satisfied that the proposed development is a good one and that it is desirable for the appropriate development of the subject lands. The Board is also satisfied that the proposed variances meet the intent and purpose of the official plan and zoning by-law to ensure that compatibility is achieved through the imposition of adequate standards for commercial properties abutting residential ones.

[11] The Appellant did not express any concerns with respect to Variance # 2 for a reduction of the minimum required front yard setback and the Board is satisfied that it is minor in that it will not cause any adverse impacts on the street scape or on the

neighbouring properties. It is noted that the required front yard setback in a “C4 Mainstreet Commercial” zoning is 0.00 m, while the site specific zoning (C4-38) on the subject property requires a 4.50 m front yard setback. The Board is satisfied that the proposed reduction is appropriate and desirable and reflects what exists on the “main street” built form along this street. It also meets the intent and purpose of the “Mixed Use” designation in the City’s Official Plan as well as the character of the “Streetsville Major Node” area.

ORDER

[12] Accordingly, the appeal is dismissed and the above variances are hereby authorized subject to any conditions imposed by the Committee.

[13] It is so ordered.

“R. G. M. Makuch”

R. G. M. MAKUCH
MEMBER