

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: August 28, 2014

CASE NO(S): PL130828

PROCEEDING COMMENCED UNDER subsection 45(12) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant jointly:	Fausto Finelli Donato Dinelli Antonio Dinelli
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	376 Derry Road W.
Municipality:	City of Mississauga
Municipal File No.:	A 213/13
OMB Case No.:	PL130828
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Heard: August 25, 2014 in Mississauga, Ontario

APPEARANCES:

Parties

Counsel*/Agent

Fausto, Antonio and Pino Finelli

Pino Finelli (Agent)

City of Mississauga

Marcia Taggart*

DECISION DELIVERED BY R. ROSSI ON AUGUST 25, 2014

INTRODUCTION

[1] Fausto, Antonio and Pino Finelli (“Applicants jointly”) have appealed to the Ontario Municipal Board (“Board”) the decision of the Committee of Adjustment (“Committee”) of the City of Mississauga (“City”) that refused to approve their minor

variance application to permit the outside storage of tractor trailers on their subject property known municipally as 376 Derry Road West. The Committee notes, however: “By-law 0225-2007, as amended, permits a building or structure that was legally existing on a property on the date of passage of this By-law (June 20, 2007) and the existing legal use of such building or structure and *[sic]* does not permit the erection of new buildings or structures and the enlargement or replacement of new buildings or structures and the enlargement or replacement of existing buildings and structures in a D, Development zone in this instance.”

[2] Pino Finelli represented the other two Applicants as an agent. Appearing at this hearing in opposition was the City as represented by its Counsel Marcia Taggart and the City’s witness, Jordan Lee, who is the City Planner charged with carriage of this file. The Board qualified Mr. Lee to provide his professional planning evidence and expert opinion in this case and he was the only witness in this case. The Applicants presented no planning evidence. Hence, the Board relied on the uncontradicted evidence of Mr. Lee that the use fails all four tests for a minor variance as set out in s. 45(1) of the *Planning Act* (“Act”). Moreover, Mr. Lee advised the Board that a zoning change of this magnitude – that is, introducing a use in this area of the City that is not currently contemplated in the City’s planning instruments – actually necessitates a rezoning application and not merely a minor variance.

[3] Contextually, the subject property is situated on Derry Road West in the eastern portion of the City’s Meadowvale Village Neighbourhood. Mississauga Official Plan (“MOP”) provides two designations for the subject property: Residential Low Density II and Business Employment. The lands are zoned ‘D’ Development, which recognizes vacant lands that are not yet developed and/or permits the use that legally existed on the date of the previously-mentioned By-law’s passing in 2007, until such time that the lands are rezoned in conformity with MOP. Prior to the passing of this By-law, the subject lands were zoned ‘A’ Agricultural, which did not permit outside storage of truck trailers and no previous minor variances have been granted to permit this use. The existing use is not permitted in the ‘D’ zone and it appears that the use, while customary

since 1972 according to the Applicants, was never established legally. Furthermore, there is no evidence of a Certificate of Occupancy ever being issued although one is required and Mr. Lee explained that the accuracy of the proposed minor variance would have to be verified as well as determine whether additional variances might be required.

[4] Mr. Lee explained that Mississauga Plan was in force at the time of the application and the application was assessed by him in that vein with appropriate reference to the direction of the newer in-force instrument. The planner showed how the proposed minor variance if approved would adversely impact the 'distinct identity' of this local community such that the outdoor storage is out of character with the surrounding adjacent residential uses (see for example Exhibit 3, policies 2.2.2.3. and 2.2.2.4, the latter requiring that development preserve and protect the existing neighbourhoods). Policy 3.3.1.11 of the Business Employment policy section of Mississauga Plan states that "Outdoor storage and display areas related to permitted industrial uses" are allowed but this is not an industrially-designated area. It is also evident that the truck trailer storage is a use unto itself and supports no industrial use on a site not so designated. Finally, Policy 3.3.2.7 requires that any permitted outdoor storage and display area should not be visible from various vantage points. In this case, the truck trailers are highly visible from Derry Road West and almost unobstructed from the various residences on the west and south sides of the subject lands. With various residents' complaints on file, it is evident that the use is neither compatible with nor sensitive to the adjacent residential uses.

[5] In MOP, the residential designation, which governs the majority of these lands, does not permit this use (see for example Exhibit 1, Tab 14 pages 51 and 52). Further, the Meadowvale Village policies section and in particular Policy 16.17.2.4 does not permit outdoor storage. Mr. Lee opined that given the direction of the previous and current official plan instrument policies as cited, the variance does not maintain the general intent and purpose of the MOP.

[6] In respect of the zoning, the Board heard that the elder Mr. Finelli bought the

property in approximately 1972 and has been storing various equipment and items on this large property since that decade. The storage of truck trailers began in approximately 2002 and has afforded the Applicants a stream of revenue to pay for the upkeep of the property as well as for their municipal taxes. However, the City does not want to encourage outside storage of truck trailers in an area of the City that is intended for residential use and there is insufficient screening in place to minimize the visual impact. This use cannot be considered to be minor in nature, wrote Mr. Lee in his June 2013 report to the Committee, and is not desirable for the appropriate development of the subject property.

[7] The existing zoning regime is clear: the 'D' Development zone permits the building or structure that is a legally existing use on the date of passing of this By-law and the existing legal use of such building or structure. As the existing outdoor storage use pre-dates the 2007 By-law, this use must be assessed in the context of the zoning in place at that time, which in this case, is 'A' Agricultural (By-law 5500). Like the 'D' zone, the 'A' zone also does not permit the use that the Applicants have enjoyed for decades. Thus, there is no as-of-right permission for this use under this much-older by-law and there is no evidence on file to show that the outdoor storage use is a legally existing use. Based on the evidence, it is not such a use, which undermines the intent of the current zoning. Accordingly, Mr. Lee opined that the variance does not maintain the general intent and purpose of the Zoning By-law and the application should have proceeded by way of a rezoning application as a new use was being sought.

[8] Mr. Lee opined that the proposed development is not desirable for the appropriate development of the subject lands because it is incompatible with the surrounding residential uses. Finally, the variance is not minor because of the 'multiple negative impacts' that it creates. There are visual impacts as the truck trailers are tall, they exceed the height of a standard fence and they can be seen from the adjacent neighbourhood residential properties. Many neighbours have communicated with the City (correspondence on file) expressing concern with the visual impact as well as issues of drainage and damage to their properties resulting from the washing of truck

trailers close their rear yards, which, in some cases, have flooded. There is a safety issue as one of the truck trailers fell on a resident's fence and a police report was taken. There are noise complaints against the operation of trucks on the property and a charge by some that the property is not properly maintained. The Applicants did not offer any explanation for these impacts and Mr. Lee's unchallenged evidence on this point and on all of his evidence were persuasive to the Board that the variance is not minor and that it fails all four tests for a minor variance as set out in the *Act*.

[9] The Applicants did not provide any information on how they could mitigate such impacts as it is their intention to continue the use until their future sales and redevelopment plans gel. However, the Board does not consider the use to be a minor one or a 'temporary' one for the reasons stated as they are proposing a use that was never contemplated for the site and is certainly not contemplated (and expressly so) in Mississauga Official Plan. The Board is entirely sympathetic to the hardworking family and their desire to be responsible citizens and in this vein, the Board determined that it was willing to withhold its Order for 60 days from the date of this hearing so that the Applicants could continue to pursue their negotiations with a developer for the possible sale of this land. The Board did this by first stating on the record that it could not support the minor variance application because it fails all four tests of the *Act*. However, if the City received a copy of an executed sales agreement that set out a date for the removal of the trailers by virtue of the sale, the Applicants could simply withdraw their appeal. Otherwise, once 60 days passes, which is October 24, 2014, the Board's Order would take effect. Both Parties were amenable to this suggestion and the City is to be commended for its flexibility on this point.

[10] Mr. Lee's professional land use planning evidence as presented and his expert opinion were highly persuasive to the Board that the proposed variance to permit the outdoor storage use does not meet any of the four tests of the *Act* and should be refused. The Board was persuaded that the Applicants should have some additional time to cement an agreement and end the outdoor storage use.

[11] The Board dismisses the appeal and does not authorize the minor variance. On consent, the Board withholds its Order for 60 days to afford the Applicants time to complete a possible sale of their property that includes a provision to remove the truck trailers within a specified period of time. Ms. Taggart will advise the Board whether the terms of that sale meet the City's requirements for removal of the offending use and if they do, the Applicants will withdraw their appeal. Otherwise, and should there be no sale of the Applicants' lands as evidenced at the hearing, the Board's Order will take effect at the end of business on October 24, 2014, the appeal will be dismissed and the variance will not be authorized as stated above..

"R. Rossi"

R. ROSSI
MEMBER

Ontario Municipal Board

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