

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** September 3, 2014

**CASE NO(S):** PL130830

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

Appellant:	The Corporation Of The City Of Mississauga
Applicant:	2184698 Ontario Inc.
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	5086 Creditview Road
Municipality:	City of Mississauga
Municipal File No.:	A 212/13
OMB Case No.:	PL130830
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Heard: February 18, 2014 in Mississauga, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

City of Mississauga

R. Kehar and I. Khalid

**DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD**

**INTRODUCTION**

[1] This is the decision for an appeal by the City of Mississauga (“City”) against the approval by the Mississauga Committee of Adjustment of an application by 2184698 Ontario Inc. (“Applicant”) for a minor variance for a property at 5086 Creditview Road, Mississauga (“subject property”). The purpose of the variance is to allow vehicle sales in conjunction with a motor vehicle service station.

[2] The subject property consists of a parcel approximately 0.98 acres in size located at the northwest corner of Eglinton Avenue West and Creditview Road. The subject property is

located at a major intersection and contains a recently developed motor vehicle service station. In the vicinity are other commercial uses as well as residential housing and apartments.

[3] Only representatives of the City appeared at the hearing and provided evidence. No one representing the Applicant attended.

### **REQUIRED VARIANCE**

[4] The proposal requires the following variance from the City of Mississauga Zoning By-law No. 0225-2007:

1. To permit motor vehicle sales accessory to the existing vehicle service station on the subject property, whereas By-law No. 0225-2007 does not permit motor vehicle sales in a C5-3, Motor Vehicle Commercial Zone.

[5] At the Committee of Adjustment hearing, the Applicant requested that the variance be granted for a period of three years. The City's Committee of Adjustment approved the above variance for a three year period subject to the following conditions:

1. The maximum number of vehicles for sale and situated on site at any given time shall not exceed five vehicles,
2. There shall be no advertising or signage permitted on the vehicle windows and no banners or signage are to be utilized to advertise cars for sale on the property.

### **ISSUE**

[6] The main issue for the Board at this hearing was whether the proposed variance meets the four tests under s. 45(1) of the *Planning Act* ("Act"). More specifically, does the variance maintain the general purpose and intent of the City's Official Plan, does the variance maintain the general purpose and intent of Zoning By-law No. 0225-2007, is the

variance minor and is it desirable for the use of the property?

## **EVIDENCE**

[7] The City provided evidence at the hearing in opposition to the proposed variance.

[8] The Board heard evidence on behalf of the City from Jordan Lee, Committee of Adjustment Planner with the City. Mr. Lee is a provisional member of the Ontario Professional Planners Institute who has more than two years of professional experience. He was qualified by the Board as an expert, capable of providing evidence in the area of land use planning.

[9] As noted earlier, the Applicant did not appear at the hearing and provided no evidence.

[10] The Board heard no evidence in support of the proposed variance.

[11] The City's position was that the proposed variance is not appropriate for the subject property, it would allow a use that is not permitted in an area designated as Motor Vehicle Commercial and zoned C5-3, Motor Vehicle Commercial, and it does not meet the four tests under s. 45(1) of the Act.

[12] Mr. Lee indicated that the subject property is designated as Motor Vehicle Commercial in the City's Official Plan and that this designation is limited to corner lots throughout the City. He referred to s. 11.2.10 which identifies the uses allowed in this designation, and noted that motor vehicle sales is not included. (Exhibit 1A, Tab 13, p. 40). Mr. Lee also indicated that this section of the Official Plan only lists take out restaurants and retail stores as accessory uses within the Motor Vehicle Commercial designation.

[13] Mr. Lee stated that the majority of the current Official Plan was approved by the Board in April 2012 and that the remaining appeals do not affect the application. He stated that the Official Plan will permit motor vehicle sales in Mixed Use Areas in parts of the City

that are employment areas. However, the subject property is not designated as Mixed Use Area and is not within an employment area.

[14] Mr. Lee indicated that in the previous Official Plan, motor vehicle sales were permitted in the General Retail designation and that areas with this designation were incorporated into the Mixed Use Area designation in the current Official Plan. He indicated that he expects a housekeeping amendment to come forward that will allow motor vehicle sales in the Mixed Use Area designation. However, he stated that there is no intent to allow motor vehicle sales within areas designated as Motor Vehicle Commercial.

[15] Mr. Lee's opinion is that the general intent and purpose of the Official Plan is for the Motor Vehicle Commercial designation to provide a range of services for local areas and convenience type uses related to vehicles. The Official Plan generally directs motor vehicle sales to locations where they can serve a broader area. Therefore his opinion is that the variance does not maintain the general purpose and intent of the City's Official Plan.

[16] Mr. Lee also contended that the variance does not maintain the general purpose and intent of Zoning By-law no. 0225-2007. He indicated that only four uses are permitted in a C5-3 zone and vehicle sales is not one of them (Exhibit 1A, Tab 17, p. 96). He also stated that car wash facilities are not permitted in a C5-3 zone and only accessory uses that are specifically identified in the By-law are allowed. The By-law identifies the only permitted accessory uses as "a convenience retail and service kiosk" and "the sale of propane cylinders" (Exhibit 1B, p. 8). Mr. Lee indicated that the By-law only permits motor vehicle sales in a C3 General Commercial Zone and that it is more of a destination use rather than a convenience use. For these reasons he contended that the proposed variance does not meet the general purpose and intent of the By-law.

[17] Mr. Lee also maintained that the proposed variance is not minor. He stated that it would add a new use to a property zoned C5-3 which would not be appropriate. It could negatively impact the streetscape and views from the residential buildings in the area. It could also consume parking spaces on the subject property.

[18] Mr. Lee's opinion is that the variance is not desirable for the use of the property. He indicated that the proposed use could impact the site plan for vehicle service facility. Parking spaces required for the service facility could be consumed by the sales operation. The proposed operation could affect access and egress to the site and could impact a berm located along Eglinton Avenue West. Therefore, he maintains that the variance is not desirable for the use of the property.

[19] Mr. Lee also contended that the conditions imposed by the Committee of Adjustment would not eliminate the impact of the variance.

### **ANALYSIS AND FINDINGS**

[20] The Board has carefully considered the submissions. The evidence provided by the City in opposition to the application is uncontested. The Board has no evidence in support of the application. The Board accepts and agrees with the opinion evidence provided by Mr. Lee.

[21] The Board finds that the proposed variance does not maintain the general purpose and intent of the City's Official Plan. The variance would provide for motor vehicle sales on the subject property as an accessory use which is not permitted in areas designated as Motor Vehicle Commercial. The intent of the Official Plan is to direct this use to areas where they can serve a broader area. The subject property is not this type of location.

[22] The Board finds that the proposed variance does not meet the general purpose and intent of Mississauga Zoning By-law No. 0225-2007. The By-law does not allow motor vehicle sales in areas zoned C5-3, Motor Vehicle Commercial. The intent of the By-law is to provide for these uses in locations in the General Commercial Zone where they can perform more of a regional function.

[23] The Board finds that the variance is not minor. It would provide for a use that is not appropriate and could cause a negative impact on the area.

[24] The Board finds that the variance is not desirable for the use of the property. The proposal could impact the use of the existing facility on the subject property.

[25] The Board also finds that the conditions imposed by the Committee of Adjustment would not bring the proposed variance into compliance with the four tests under s. 45(1) of the Act.

[26] Based upon the above, the Board will allow the appeal and will not authorize the variance. The appropriate order is provided below.

### **ORDER**

[27] The Board orders that the appeal is allowed and the variance to Mississauga Zoning By-law No. 0225-2007 is not authorized.

*“C. Conti”*

C. CONTI  
MEMBER

### **Ontario Municipal Board**

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