

ISSUE DATE:

March 24, 2014



PL131281

Ontario
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: Norman Ferguson
Applicant: 1820554 Ontario Ltd.
Subject: Minor Variance
Variance from By-law No.: 6593
Property Address/Description: 289 Cannon Street East
Municipality: City of Hamilton
Municipal File No.: A-196/13
OMB Case No.: PL131281
OMB File No.: PL131281

IN THE MATTER OF subsection 45(17) of the *Planning Act*, R.S.O. 1990, c.P13, as amended

Motion By: 1820554 Ontario Ltd.
Purpose of Motion: Request for an Order Dismissing the Appeal
Appellant: Norman Ferguson
Subject: Minor Variance
Property Address/Description: 289 Cannon Street East
Municipality: City of Hamilton
Municipal File No.: A-196/13
OMB Case No.: PL131281
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APPEARANCES:

Parties

1820554 Ontario Ltd.

Norman Ferguson

Counsel

Aldo Berlingieri

MEMORANDUM OF ORAL DECISION DELIVERED BY R. ROSSI ON MARCH 13, 2014 AND ORDER OF THE BOARD

[1] 1820554 Ontario Ltd., the Applicant/Appellant (“Applicant”), received a favorable decision of the Committee of Adjustment (“Committee”) of the City of Hamilton (Stoney Creek) that granted its requested variance from Zoning By-law No. 6593 to permit a retail use (that also permits prepared foods) on a portion of the site that has dual zoning, as well as to permit a reduction in landscaping requirements and a reduction in the dimensions of parking spaces (dimensions that reflect forthcoming municipal plans for reductions in the size of parking spaces). The Board learned that the new retail use will possibly result in a convenience store tenant.

[2] Adjacent resident Norman Ferguson appealed that decision to the Ontario Municipal Board (“Board”). The Applicant has subsequently brought a motion seeking an Order of the Board to dismiss the appeal of Mr. Ferguson as his appeal discloses no apparent land use planning grounds.

[3] Aldo Berlingieri was counsel for the Applicant and City Planner Joe Lakatos appeared as a friend of the Board. Mr. Ferguson represented himself. Mr. Ferguson’s response to the Applicant’s motion disclosed no planning grounds for his appeal. The Board’s planner confirmed with the decision maker that this was pointed out to Mr. Ferguson who wished to pursue the appeal. At the hearing, the Member invited Mr. Ferguson to provide his reasons for appealing the Committee’s decision.

[4] Mr. Ferguson expressed concern with the hours of operation if a convenience store began to operate on the subject site. He explained that he had a petition of some 200 residents but no one appeared at the hearing. He was concerned with the type of people who might be drawn to a business that operates 24 hours a day and he noted that he had found various paraphernalia strewn about the ground of the subject property (even though the site is currently an automotive repair and sales facility).

[5] Mr. Berlingieri explained that these are issues of municipal by-law enforcement and not issues for the Board’s determination on the planning merits of his client’s application. The Board is persuaded by this submission and this was explained at length to Mr. Ferguson. Mr. Ferguson took comfort in some of the Applicant’s assurances that some improvements to the site will also be occurring.

[6] Notwithstanding Mr. Ferguson's oral evidence and his written response to the Applicant's motion, none of his concerns disclose any apparent land use planning grounds as the *Planning Act* ("Act") requires. The Ontario Planning Legislation is clear on this point:

...the Municipal Board may dismiss all or part of an appeal without holding a hearing, on its own initiative or on the motion of any party if,

- (a) It is of the opinion that,
 - (i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Board could allow all or part of the appeal...

ORDER

[7] In accordance with s. 45(17) of the Act, the Board allows the motion and dismisses the appeal. The Board also releases the future hearing dates scheduled for this matter.

"R. Rossi"

R. ROSSI
MEMBER