

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 3, 2015

CASE NO(S): PL140739

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

Applicants and Appellants:	Tin-Yau Investments Inc.
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	5920 Turney Drive
Municipality:	Mississauga
Municipal File No.:	A182/14
OMB Case No.:	PL140739
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Heard: February 23, 2015 in Mississauga, Ontario

APPEARANCES:

Parties

Counsel

Tin-Yau Investments Inc.

Harry Mann

City of Mississauga

Raj Kehar

MEMORANDUM OF ORAL DECISION DELIVERED BY R. ROSSI ON FEBRUARY 23, 2015 AND ORDER OF THE BOARD

INTRODUCTION

[1] Tin-Yau Investments Inc. ("Appellant") has appealed to the Ontario Municipal Board ("Board") the decision of the Committee of Adjustment ("Committee") of the City of Mississauga ("City") that refused a requested variance from Zoning By-law No. 0225-2007, as amended ("Zoning By-law"), to permit the operation of a Motor Vehicle Rental Facility, including the rental of commercial vehicles at 5920 Turney Drive ("subject property") whereas the Zoning By-law does not permit the use on the subject property.

[2] The Appellant operates a convenience store in a local neighbourhood plaza comprising four small businesses. The area is zoned C1-Convenience Commercial in the Zoning By-law, which does not permit private or commercial vehicle rentals. The little plaza abuts a low-rise residential neighbourhood to the north and west as well as Greenbelt Lands to the south. The Appellant seeks the variance to permit the operation of a U-Haul Truck Rental business on the plaza property but the use is not permitted in municipal planning instruments.

[3] The Appellant was represented by a counsel, Harry Mann, but the Appellant brought no planning evidence whatsoever or expert witness to support the minor variance application. The only planning evidence came from the Board-qualified City Planner, Jordan Lee. Further, Mr. Lee's professional land use planning evidence and expert opinion were uncontradicted and unshaken in questioning by the Appellant's counsel.

[4] Mr. Lee addressed the four tests for a minor variance as set out in s. 45(1) of the *Planning Act* ("Act") in his presentation to the Board and this planner demonstrated how the proposed variance fails all of the tests. The proposed use is not permitted in lands designated "Convenience Commercial" (Section 11.2.9 of Mississauga Official Plan). There are three specifically designated areas where such uses are permitted; this is not one of them. The proposed variance does not maintain the general intent and purpose of the Official Plan.

[5] The current convenience store use is permitted in Zoning By-law No. 0225-2007 ("Retail store less than or equal to 600 m² GFA – non-residential"); the proposed accessory rental vehicle use is not. Table 6.2.1 – "C1 to C5 Permitted Uses and Zone Regulations" of the Zoning By-law (Exhibit 1, Tab 16, page 98) is instructive in this regard: Line 2.1.4 speaks to "Motor Vehicle Sales, Leasing and/or Rental Facility – Restricted" and is a use permitted in a C3-General Commercial zone only. Similarly, Line 2.1.5 speaks to "Motor Vehicle Rental Facility" and is also permitted in a C3-Generla Commercial zone only. Neither of these uses is permitted in the C1-Convenience Commercial zone. The proposed variance does not maintain the general intent and purpose of the Zoning By-law.

[6] Introducing a use in an area that the City deems not to be permissible for that use is potentially disruptive to the orderly planning regime of the City and not a practice the Board

wishes to implement in this case. Further, it is undesirable to dismantle the explicit uses permitted in the various zoning categories at play in the Zoning By-law by varying these through piecemeal changes to land uses. To do so without any planning justification and no supporting evidence would be undesirable in the Board's view. The proposed variance is not desirable for the appropriate development of the subject property.

[7] Lastly, the introduction of a commercial vehicle rental business in an area not permitted in the C1-Convenience Commercial zone and abutting the rear yards of low-rise residential uses next door has the potential to impact adversely the character of the immediate area as well as to create adverse impacts on the adjacent homeowners. The proposed variance is not minor.

[8] The Board uses this opportunity to remind persons appearing before it that parties launching an appeal before the Board have an obligation to present planning evidence in support of their applications at the hearing. Only the City planner presented planning evidence in this case and it was on his persuasive reading of the municipal instruments and expert opinion that the Board based its findings: the variance fails all four tests for a minor variance as set out in the Act and introduction of the proposed use on the subject property for the reasons stated does not represent good planning.

ORDER

[9] The appeal is dismissed and the minor variance is not authorized.

"R. Rossi"

R. ROSSI
MEMBER

Ontario Municipal Board

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