

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: April 9, 2015

CASE NO(S): PL141284

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*,
R.S.O. 1990, c. P. 13, as amended

Appellant:	Shawn Jones and Karen Dick
Subject:	By-law No. 14-287
Municipality:	City of Hamilton
OMB Case No.:	PL141284
OMB File No.:	PL141284

Heard: March 30, 2015 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Punjab Auto Sales Inc. (“Applicant”)	Aldo Berlingieri*
City of Hamilton (“City”)	Michael Kovacevic*
Shawn Jones and Karen Dick (“Appellants”)	Self-represented

**DECISION DELIVERED BY STEVEN STEFANKO ON MARCH 30, 2015 AND ORDER
OF THE BOARD**

BACKGROUND

[1] The Applicant is the owner of 2791 King Street East in the City of Hamilton. It is a vacant parcel of land in the northwest quadrant of the intersection (“Intersection”) of King Street and Owen Place, having an area of 0.065 hectares.

[2] To the north of the site are detached residential dwellings; to the east, a used car dealership and a police station; to the south small scale retail uses, a gas station and townhouses; and, to the west, a detached residential dwelling and further west, a hospital related urgent care center with a large parking lot along King Street.

[3] The Applicant wishes to rezone its land for a private commercial parking lot. This lot would then be used in conjunction with the future development (medical and office uses) of land immediately across the street to the east ("Medical Site"). The Medical Site is owned by a company related to the Applicant and is located in the north-east quadrant of the Intersection.

[4] City Council passed a By-law ("ZBA") on September 24, 2014 approving the commercial parking lot and the Appellants, being the owners of a two-story duplex immediately west of the subject parcel, appealed ("Appeal") such approval to the Ontario Municipal Board.

[5] The ZBA is specifically set out at Tab 3 of Exhibit 4 filed in this proceeding.

THE EVIDENCE

[6] The Appellants were not represented by counsel and did not call any witnesses to support their position. Shawn Jones simply gave evidence on his own behalf.

[7] According to Mr. Jones, the existing City By-law stipulates that there be a 3 metre ("m") setback from his residential property. Since the ZBA requires only a 1 m planting strip in conjunction with a visual barrier i.e. privacy fence, separating his property from the site, he is of the view that:

- (a) The parking lot will be too close to his property;

(b) A 1 m setback cannot adequately accommodate a privacy fence and shrubs or trees; and

(c) The setback of 1 m gives rise to potential damage to the privacy fence when vehicles attempt to negotiate a parking space along the westerly limit of the site.

[8] Nick DeFilippis, a professional engineer, Mohinder Tamba, a principal of the Applicant and Michael Crough, a planner with the IBI group, spoke in support of the ZBA.

[9] Mr. DeFilippis testified that, in his view, the one metre planting strip was sufficient to accommodate the plantings required and would satisfy the concerns of the Appellants. He also did not believe vehicular overhang would present any problem to whatever privacy fence is constructed.

[10] Mr. Tamba explained that the subject site was acquired from the City when the City deemed such lands as surplus and that the parking lot would be a convenient and useful addition to the development of the Medical Site.

[11] Mr. Crough provided expert land use planning evidence and confirmed that, in his opinion, the proposal is consistent with the Provincial Policy Statement 2014 and conforms to the Growth Plan for the Greater Golden Horseshoe and the Urban Hamilton Official Plan.

[12] The City did not call any witnesses in this case.

DISCUSSION

[13] There are a number of reasons why I unable to accept the position of the Appellants in this matter.

[14] First, the evidence given by Mr. Crough and Mr. De Filippis was persuasive and I am loath to disregard it, particularly when no expert or professional testimony was provided in response.

[15] Second, the ZBA has a holding provision which relates to, *inter alia*, the Applicant applying for and receiving Site Plan approval to the satisfaction of the Manager of Development Planning, Heritage & Design. This process will, in my estimation, give rise to a functional, safe and aesthetically pleasing development, which meets City standards.

[16] Third, the required setback from an adjoining residential district boundary as set out in s.18A (11) (a) of By-law No. 6593 is 1.5 m and not 3 m. The reduction from 1.5 m to 1 m represents, in my view, a modest and tolerable deviation from the By-law's requirement.

[17] And lastly, I am mindful of the provisions of s. 2.1 of the *Planning Act* which require that I have regard to Council's decision in this matter. In reaching its decision, Council carefully considered the information presented to it, including comments made by members of the public. Based on the evidence presented during the course of this hearing, I see no reason to alter that decision.

CONCLUSION

[18] Based on all of the foregoing, it is ordered that Zoning By-law No. 6593 is amended in accordance with the ZBA and the Appeal is dismissed.

[19] When the Applicant submits a Site Plan application to the City for approval, the City shall provide a copy thereof to the Appellants and invite them to provide, in a timely fashion, any comments they may have. It is further understood that the City is not bound

by, nor is it obligated to implement, any comments so received.

“Steven Stefanko”

STEVEN STEFANKO
VICE CHAIR

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please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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