

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: June 23, 2015

CASE NO(S): PL150113

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

Applicants and Appellants:	Fausto, Donato & Antonio Finelli
Subject:	Minor Variance
Variance from By-law No.:	0225-2007, as amended
Property Address/Description:	376 Derry Road West / Part of Lot 10, Concession 1, W.H.S.
Municipality:	City of Mississauga
Municipal File No.:	"A" 008/15
OMB Case No.:	PL150113
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OMB Case Name:	Finelli v. Mississauga (City)

Heard: June 15, 2015 in Mississauga, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Fausto, Donato and Antonio Finelli,	William Oughtred
City of Mississauga	Marcia Taggart*

DECISION OF THE BOARD DELIVERED BY J. de P. SEABORN

[1] The matter before the Board is an appeal by Fausto, Donato and Antonio Finelli ("Applicant") from a decision made by the Committee of Adjustment ("Committee") for the City of Mississauga ("City"). The Committee refused to authorize a variance that

would result in a legal permission for the Applicant to continue to use its lands at 376 Derry Road West for the purpose of outdoor storage of transport trailers and trucks.

[2] Jordan Lee, a land use planner with the City, who was qualified to provide opinion evidence, explained the long history with the property, the variance that the Applicant requires to continue to use the property for outdoor storage purposes and the rationale for the City's position in opposition to the relief sought. It was Mr. Lee's opinion and the submission of Ms. Taggart, that the appeal should be dismissed and the variance should not be authorized. Antonio Finelli testified with respect to the history of the property, current uses and the family's intention to sell the property. William Oughtred, a business associate and friend of the Applicant's family, appeared as representative, provided submissions in support of the variance sought and asked questions of the City's planner. Mr. Oughtred was helpful and cooperative throughout, clearly interested in finding a solution to the Applicant's dilemma, explained below.

[3] The Applicant has owned the subject property for several decades and while the family holds it for future development purposes, Mr. Finelli explained that in order to generate the necessary income to pay for the property, it has been used for parking of tractor trailers. Given the location of the land, the use has not historically been an issue. However, surrounding properties have been developed with residential uses and therefore, there has been a land use conflict between the Applicant's use of the property and the relatively recent residential uses. By-law No. 0225-2007 (which zones the lands 'D' Development) permits any use that legally existed on the date of the passing of the By-law. The historical zoning for the lands was Agricultural, which did not permit outdoor storage use. Consequently, the parking of tractor trailers has never been a permitted use. Mr. Oughtred submitted that his clients were clearly in error in not obtaining a minor variance from the pre-existing zoning to permit outdoor storage. Had they done so, the use would be legal under the in-force zoning. As a result of complaints about the trailers, the City investigated and advised the Applicant that either a re-zoning or a minor variance is required.

[4] The Applicant sought a minor variance in 2013, which was refused by the Committee and the Board under appeal (Decision issued August 28, 2014). The Applicant launched a fresh application in 2015, proposing a berm be installed (and planting) as a condition of the variance to address the issues raised by residential property owners to the south and the east of the property. In addition, Mr. Oughtred indicated that a large number of trailers have been removed from the property and in his submission reducing the area and location for parking the trailers would mitigate the land use conflict. In this regard, he proposed conditions of approval of the application that would require significant setbacks from the existing residential homes, with the truck and trailer parking largely restricted to the area designated under the City's Official Plan ("OP") as Business Employment.

[5] The property is located in the Meadowvale Village Neighbourhood and under the OP designated Residential Low Density II for about three-quarters of the land and the remaining piece at the north end of the property, abutting Derry Road, is designated Business Employment. An outdoor storage use is not permitted under either designation, albeit, similar uses are permitted in the area designated Business Employment. As indicated above, the zoning for the property is "Development" and it is Mr. Finelli's goal to sell the land precisely for that purpose. The applicable Official Plan policies indicate that the land should be dedicated and preserved for residential purposes. The servicing arrangements make it challenging and Mr. Finelli explained that his land needs to be sold with the neighbouring property. Otherwise, it is essentially land locked for future residential development.

[6] I adopt and rely upon the submissions of Ms. Taggart and the opinion evidence of Mr. Lee that, simply put, the variance sought fails to satisfy the four tests set out under s. 45(1) of the *Planning Act*. On this basis, the variance cannot be authorized. There was no contrary planning opinion offered by the Applicant and Mr. Lee's rationale and analysis was thorough. While I appreciate that Mr. Oughtred suggested a time limited variance of one year, in the circumstances that period of time is too long to permit the outdoor storage use given the existence of a previous Board decision

denying the variance and the concern expressed by the residents in the context of that application. Nonetheless, some additional time should be afforded for the Applicant to either complete a sale (which he hopes is imminent) and time to remove the trailers.

[7] For all of the reasons given, the appeal is dismissed and the variance is not authorized. However, given that the trailers have recently been moved away from the neighbouring residential uses and the evidence of Mr. Finelli, that he is in process of attempting to sell the property, the Board's Order is withheld for a period of six months. This should permit an orderly sale of the property. Regardless of the timing of any sale, all truck trailers and any associated outdoor storage uses must be removed from the property no later than when the Board's Order is issued (six months from the date of this decision).

"J. de P. Seaborn"

J. de P. SEABORN
VICE-CHAIR

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Ontario Municipal Board

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