

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: August 19, 2015

CASE NO(S): PL150144

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

Appellant:	Glacier Trading Corporation
Applicant:	Hughson Street Baptist Church
Subject:	Minor Variance
Variance from By-law No.:	6593
Property Address/Description:	500, 502-512 James Street North
Municipality:	City of Hamilton
Municipal File No.:	A-260/14
OMB Case No.:	PL150144
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OMB Case Name:	Glacier Trading Corporation v. Hamilton (City)

Heard: June, 18 2015 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Glacier Trading Corporation
("Appellant")

Lory James

Hughson Street Baptist Church
("Applicant")

Nancy Smith*

MEMORANDUM OF ORAL DECISION DELIVERED BY RICHARD JONES AND SYLVIA SUTHERLAND ON JUNE 18, 2015 AND ORDER OF THE BOARD

[1] An application was approved by the Committee of Adjustment ("COA") for the City of Hamilton (the "City") with regard to the Applicant for their property at 500, 502-512 James Street North. The application served to permit the redevelopment of the

subject lands for a place of worship and a community centre by altering the exterior façade and the construction of a 158 square metre (“m²”) rear addition to the existing building. The improvements are subject to site plan control.

[2] The variances involved in that approved application were as follows:

- A minimum front yard depth of 0.0 metres (“m”) was granted in lieu of the required 6.0 m. That approval relates to the existing building situation.
- A minimum north side yard width of 0.0 m was approved. The required setback was 1.2 m but the existing building currently straddles that lot line.
- A minimum parking space size of 2.6 m wide x 5.5 m long was approved instead of the required parking space size of 2.7 m wide x 6.0 m long.
- Finally, a 1.5 m planting strip and a visual barrier was not required for the north side lot line in consideration of existing built conditions on the subject property.

[3] The neighbour to the north, Glacier Trading Corporation of 520 James St. North, appealed the decision of the COA.

MOTION TO ADJOURN

[4] One day prior to the hearing, the Board received notice from the representative for the Appellant, Lory James, of her intention to seek an adjournment. Ms. James’ planner, Jessica Annis was apparently ill and was unable to provide testimony according to the Appellant. In response, Ms. Smith, counsel for the Applicant indicated her client’s opposition to the adjournment. In her view the planner, only recently hired by the Appellant despite the much earlier appeal made in February 2015 by the Appellant, was inexperienced in this particular matter and therefore, not suited to testify on this land use matter.

[5] In this regard, the Board agrees with Ms. Smith. The Appellant in the Board's opinion had many months to prepare for this hearing and was even advised by the Applicant's solicitor to retain a qualified land use planner months before this proceeding. The Appellant's last minute request for an adjournment does not accord with the Board's *Rules of Practice and Procedures* with regard to notice, does not constitute an emergency, nor does a denial of the adjournment in our view deprive the Appellant of a fair hearing. It was also evident to the panel that an adjournment would cause additional expense and delay, problems detrimental to the Applicant which had clearly prepared for the hearing. The Motion was accordingly dismissed.

[6] The Board heard from Gary Zebroski, architect, who has represented the Applicant from the outset with respect to site plan and architectural submissions to the City. We heard that the addition constituted only a 3 m wide expansion in line with the rear main wall of the existing structure consistent with the nature of development in this downtown neighbourhood. We heard that the variances arose as a consequence of the existing building situation which predated current zoning conditions and that the addition did not impede or detract in any fashion from the Appellant's ability to access her own building located adjacent to the north wall of the subject lands. The Appellant advised the Board, that the existing side door along the south wall of her building was used for handicapped access. Finally the Board was informed by the architect that the improvements by the Applicant would be very beneficial to the building and neighbourhood and further that the City had extended conditional site plan approval.

[7] The Board heard opinion evidence from Steven Boich, a development planning technician with the City. We also heard that Mr. Boich had been subpoenaed by the Applicant and that the planning technician had participated in the review of the application to the COA. Mr. Boich was qualified to provide expert planning evidence. The City was not represented at the hearing.

[8] Mr. Boich advised, in connection with s. 45(1) of the *Planning Act*, that the application met the intent and purpose of the Official Plan and Zoning By-law, tests one

and two, as the variances addressed existing conditions, constituted an improvement relative to the structure and the broader downtown area and addressed provincial policy by encouraging growth and development in the downtown core of the City.

[9] He opined that the variances were minor, originating as they did, from existing locational conditions, and further that that the variances did not impact on the public realm, or the interests of the neighbour to the north with regard to access or privacy.

[10] With regard to test four, desirability, Mr. Boich concluded that churches are a permitted Institutional use in this area of the downtown and that site plan control would regulate issues pertaining to drainage, servicing, etc.

[11] On behalf of the Appellant, we heard from Jay Scott who described his occupation as a software consultant and David Koetsier, who is a tenant at 520 James Street North, the Appellant's property. Both witnesses were helpful to the Board in relationship to background information but could not inform the panel with respect to planning or architectural advice pertinent to the variances or advise the Board that the variances would impede access or otherwise harm the interests of the Appellant.

[12] In testimony flowing from the Appellant, the Board was advised that she was concerned that access to her side door would lack the protection of an easement. and further, that access to parking in the rear yard of the subject lands would be blocked. In response to these assertions, the Board was informed that an easement had never been, historically, an instrument pertinent to the subject lands or one arising from the conditional site plan control approval; and further, that the Applicant would never deny the Appellant access along the common boundary dividing the two properties although the Applicant was under no legal obligation to do so.

[13] From the evidence, the Board is convinced that the interests of the Appellant are in no way affected by the approval of the variances. Moreover, the witnesses on behalf of the Applicant, provided uncontroverted evidence that the principles of good planning are upheld by the Applicant. Finally too, the Board is of the view that the church will be a

good neighbour but that the Appellant's apprehensions do not relate to the variances and the expansion by the Applicant.

ORDER

[14] The Board orders that appeal is dismissed and the variances are authorized subject to the conditions being satisfied pertinent to site plan approval imposed by the City as described in Exhibit 1.

"Richard Jones"

RICHARD JONES
MEMBER

"Sylvia Sutherland"

SYLVIA SUTHERLAND
MEMBER

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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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