

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: May 23, 2018

CASE NO(S): PL 180054

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Appellant:	Randy Cutler
Applicant:	Robert Zeidler
Subject:	Minor Variance
Variance from By-law No.:	05-200
Property Address/Description:	270 Sherman Avenue North
Municipality:	City of Hamilton
Municipal File No.:	HM/A-17:389
OMB Case No.:	PL180054
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OMB Case Name:	Cutler v. Hamilton (City)

Heard: May 10, 2018 in Hamilton, Ontario

APPEARANCES:

Parties

Robert Zeidler (“Applicant”)

Randy Cutler (“Appellant”)

Counsel*/Representative

J. Meader*

Self-represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR ON
MAY 10, 2018 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] The matter before the Local Planning Appeal Tribunal (“Tribunal”) concerns a minor variance application for the lands at 270 Sherman Avenue North in the City of Hamilton (“City”) known as the Cotton Factory Lands (“CF Lands”), to enable the conversion of 762 square metres (“m²”) of existing building space to conference centre space.

[2] For the reasons set out below the Tribunal dismissed the appeal and authorized the requested variance.

DECISION

[3] The CF Lands occupy about 1.19 hectares (“ha”) of land with frontage onto Sherman Avenue North, and flankage to both Biggar Avenue and Lansdowne Street. The CF Lands appear to have been developed as part of the older industrial area of the City near the harbour. The photographs depict a number of older industrial buildings in the immediate area, some now occupied by new uses and others remaining vacant.

[4] The CF Lands contain a number of interconnected buildings that range in height from 1 storey to 3 storeys and have a gross floor area in the range of 20,000 m².

[5] The minor variance seeks to enable the conversion of 762 m² of that space to a permitted use of a conference centre. To facilitate that, the Zoning By-law standards require 206 parking spaces in total for the site. The City however only recognizes 78 parking spaces on site. The Applicant applied for relief.

[6] The circulation comments provided by various departments of the City indicated inter alia that: the application for conversion was consistent with the Provincial Policy Statement (“PPS”); that the CF Lands were “listed” but not designated pursuant to the

Ontario Heritage Act, that the proposed adaptive re-use of a portion of the CF Lands as a conference centre conformed to the City's Official Plan for built heritage; and that while the Official Plan policies encouraged shared parking facilities, that the provision of 78 parking spaces on site versus the required 206 spaces was such that the City Planning Department recommended that the application be "tabled" and the Applicant prepare and provide a Parking Justification Study.

[7] Notwithstanding the Planning Staff recommendation, the Committee of Adjustment heard the matter and authorized the requested minor variance.

[8] The Appellant appealed.

[9] In the hearing before the Tribunal, the City did not appear as a party nor was any witness from the City called.

[10] Counsel for the Applicant called two expert witnesses: Stewart Elkins, a transportation planner, and Brenda Khes, a land use planner.

[11] Mr. Elkins had prepared a Parking Justification Study in which he found that: there were actually 91 "physical" parking spaces on the CF Lands; that in his larger study area there were a total of 412 parking spaces including 43 off site parking spaces by private agreement, 260 street parking spaces, and 18 public parking lot spaces.

[12] Mr. Elkins had also created a second study area in the immediate vicinity of the CF Lands for which he demonstrated that there were 258 parking spaces.

[13] His evidence was that in addition to the inventory of parking spaces that had been done, he had also looked at the typical daily demand for parking spaces at the CF Lands over a course of three days, and for one gala event. His findings are in Exhibit 2 and it demonstrates that there is greater parking supply than parking demand. In addition he had also considered the possible impact if both of the private parking agreements were not renewed, and the result was that the supply of parking spaces still

exceeded demand.

[14] He recommended based on his Parking Justification Study that the minor variance be approved.

[15] Ms. Khes provided her expert land use planning opinion. The Tribunal notes that Ms. Khes practices in the City and was formerly the Manager of Community Planning for the City.

[16] She opined that the minor variance was consistent with the PPS, conformed to the Growth Plan for the Greater Golden Horsehoe ("Growth Plan"), and satisfied all four tests of s. 45 (1) of the *Planning Act* ("Act").

[17] In particular she drew the Tribunal's attention to the following:

- a. The proposed adaptive re-use of an older industrial building in an old industrial area of the City that would contribute to the PPS Vision for a strong economy, s. 1.1.1 (e) for cost effective development patterns and standards that would minimize land consumption, s. 1.1.2 that encouraged intensification and redevelopment, and the redevelopment of brownfield lands;
- b. With regard to the Growth Plan she highlighted s. 2.2.5.4 which provides: "...In planning for employment, surface parking will be minimized and the development of active transportation networks and transit-supportive built form will be facilitated. She pointed out that there were two City bus routes each within about 440 metres ("m") of the CF Lands and there were City soBi bike share bicycles available at the front of the building.
- c. With regard to the City's Official Plan she cited s. B 3.3.10.2 that states: "...shared parking will be encouraged where appropriate." She noted that there were two existing (verbal) agreements with regard to off site parking.

- d. With regard to the City's Zoning By-law she took no issue with the mathematical calculation for the number of required spaces (i.e. 206), but noted that the proposed use for a conference centre was a permitted use in the Zoning By-law.

[18] She then specifically addressed the four tests set out in s. 45(1) of the Act.

[19] She noted that the City's Official Plan encouraged redevelopment and adaptive re-use of older buildings in the old industrial area of the City, that the use proposed was a permitted use, that shared parking was encouraged and (relying on the Parking Justification Study) opined that adequate parking was being provided.

[20] With regard to the second test Ms. Khes testified that the general intent and purpose of the Zoning By-Law was to ensure that there was sufficient parking and no unacceptable adverse impacts. Again based on the Parking Justification Study, she found there was adequate parking and no such impacts.

[21] Whether the application was desirable for the appropriate development or use of the land, building or structure, her evidence was that the CF Lands were industrial lands and part of an old industrial area, and that it was important to note that the proposed use as a conference centre was a permitted use in a "listed" building and that it was desirable as the variance would enable the adaptive re-use of the building in an older industrial area.

[22] Finally with regard to the last test of being minor in nature, she stated that the test was not a mathematical test, but rather whether there were any unacceptable adverse impacts that arose out of the variance. In her opinion (based on the Parking Justification Study) there were none.

[23] Being satisfied that all four tests had been met, Ms. Khes recommended to the Tribunal that the appeal be dismissed.

[24] The Appellant called but one witness and whose evidence was about the present status of a parking arrangement for one of the off site parking locations. This site had only recently been acquired in March of 2018 and negotiations were on-going with regard to the compensation for the parking arrangement.

[25] The Tribunal, having considered all the evidence and the submissions of the parties, found that it would authorize the minor variance as:

- a. The Tribunal had the uncontroverted expert evidence and Parking Justification Study of Mr. Elkins with regard to the supply of parking exceeding demand as found in Exhibit 2;
- b. The Tribunal had the uncontroverted expert evidence of Mr. Khes that the minor variance application was consistent with the PPS, conformed to the Growth Plan and met the four tests of s. 45(1) of the Act;
- c. The Tribunal found that the appeal was founded on the mathematical difference between the required parking in the Zoning By-law (206 spaces) versus the actual City allowed parking on the CF Lands (78), a difference of 128 spaces, and the argument that such a difference cannot be “minor”;
- d. The Tribunal noted that the PPS in its Vision Statement provides that: “Strong, liveable and healthy communities promote and enhance human health and social well-being, are economically and environmentally sound, and are resilient to climate change”. This application promotes the adaptive re-use of a listed building in an old industrial area, and in an area with adequate on street and off site parking;
- e. The Tribunal noted that the Growth Plan directs that surface parking will be minimized. This is a mandatory provision and not a matter of encouragement;

- f. The City's Official Plan encourages shared parking;
- g. Thus the Tribunal preferred the evidence of Mr. Elkins and Ms. Khes.

[26] The Tribunal found that all matters of provincial interest set out in s. 2 of the Act have been duly considered; that the application was consistent with the PPS; that the application conformed to the Growth Plan; and the application satisfied the four tests of s. 45(1) of the Act.

[27] The Tribunal would stress that zoning standards are not in and of themselves the desired end, but merely a means to a desired end, and that desired end is good planning. The Tribunal is satisfied that this application constitutes good planning.

[28] Accordingly the Tribunal will uphold the decision of the Committee of Adjustment, dismiss the appeal and authorize the requested variance.

[29] This is the Order of the Tribunal.

"Blair S. Taylor"

BLAIR S. TAYLOR
MEMBER

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Local Planning Appeal Tribunal

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