

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



ISSUE DATE: November 05, 2020

CASE NO(S):

PL200283

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

Applicant	Gold Star Plaza Ltd.
Appellant	Raghu Ravindra
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	60 Dundas Street East
Municipality:	City of Mississauga
Municipal File No.:	"A" 38/20
LPAT Case No.:	PL200283
LPAT File No.:	PL200283
LPAT Case Name:	Ravindra v. Mississauga (City)

Heard: October 28, 2020 by video hearing

APPEARANCES:

Parties

Counsel*/Representative

Raghu Ravindra

Failed to appear

Gold Star Plaza Ltd.

Gholam Garmsiri

City of Mississauga

Lia Magi*
Gabriella Dedelli (Student-at-Law)

**MEMORANDUM OF ORAL DECISION DELIVERED BY T.F. NG ON OCTOBER 28,
2020 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] Raghu Ravindra (“Appellant”), of unit 2906, at 50 Absolute Avenue in the City of Mississauga (“City”), has appealed to the Local Planning Appeal Tribunal (“Tribunal”) the Committee of Adjustment’s (“COA”) approval of variance application by Gold Star Plaza Ltd. (“Applicant”) in respect of property with municipal address 60 Dundas Street East Unit 5A (“Subject Property”) located south-east of the Dundas Street East and Mississauga Road intersection. The Subject Property’s current use is as an existing restaurant. The Applicant is proposing to convert the existing restaurant to a new restaurant, as a result of a change of ownership. The prior minor variance permission lapsed when the previous restaurant ceased to be the tenant of the Subject Property and, therefore, a fresh minor variance permission for the location was required.

[2] The Applicant requested relief from the Zoning By-law No. 0225-2007 is to permit a restaurant on the Subject Property proposing a restaurant within 60 metres of a residential zone, whereas the By-law does not permit a restaurant within 60 metres of a residential zone. The COA on February 27, 2020 granted the variance.

[3] The Appellant appealed the decision on March 16, 2020 with the following reasons:

1. Objecting to the Bar and Restaurant beside India Town Super Market;
2. Heard from a mutual friend, kitchen changes are being made internally.

[4] The City filed a Notice of Motion dated October 7, 2020 supported by an affidavit of Roberto Vertolli sworn on October 7, 2020 to dismiss the appeal without a hearing. The Motion Record is marked as Exhibit-1. The affidavit of service of Gina Belmonte sworn on October 8, 2020 is marked as Exhibit-1A.

[5] When the hearing commenced at 10 a.m., City’s counsel was in attendance, but the Appellant and the Applicant were absent. The Tribunal stood down the matter for 15

minutes to enable their attendance. At 10.15 a.m., when the hearing re-convened, the Applicant's representative Gholam Gamsiri was present, however the Appellant failed to appear.

[6] Since the Appellant has demonstrated disinterest in his appeal, and the Motion which has been served on the Appellant, and to which he has not replied, is before the Tribunal, Counsel for the City was asked to proceed with this matter in the absence of the Appellant.

[7] Student-at-Law, Gabriella Dedelli was tasked with submissions on the Motion under the supervision of legal counsel Lia Magi. The Tribunal verified that the Law Society of Ontario ("LSO") has not placed any restrictions on students such as Ms. Dedelli from appearing and submitting at a forum like the Tribunal [By-law 4 of the Law Society of Ontario at s. 34 "A student (defined at s.17 as one who has entered into service under articles of clerkship) may, without a licence, provide legal services in Ontario under the direct supervision of a licensee who holds a Class L1 licence who is approved by the Society while, (a) in service under articles of clerkship" Additionally LSO guidelines permit rights of appearance to students].

[8] Ms. Dedelli gave a clear and concise account of why the Appeal should be dismissed without a hearing. The Tribunal is satisfied that the Appeal should be dismissed for the following reasons.

ISSUE

[9] The short issue in this matter is whether the Appeal contains apparent land use planning grounds.

Pursuant to section 45(17)(a)(i) of the *Planning Act* ("Act"), the Tribunal may dismiss all or part of an appeal without holding a hearing if, it is of the opinion that the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Tribunal could allow all or part of the appeal.

ANALYSIS

[10] The principles that are applicable may briefly be stated as follows:

1. Under the provision, the Tribunal is entitled to examine the reasons stated to see whether the reasons stated constitute genuine, legitimate and authentic planning reasons [*Toronto (City) v. East Beach Community Association* 1996 CarswellOnt 5740, (1996) O.M.B.D. No.1890, 42 O.M.B.R. 505].
2. At the time of the motion, there should be the presence of a real, relevant and tenable issue or issues, expressly raised by the appellant, worthy of adjudication with a demonstration of an intent to call probative evidence on the issue at the ultimate hearing and the steps taken to that end [*Millar v. St. Catharines (City)* 2017 CarswellOnt 2540, (2017) O.M.B.D. No. 164, 2 O.M.B.R. (2d) 297, 74, M.P.L.R. (5th) 344].
3. Raising the apprehension of possible planning grounds or deploying planning language is not sufficient to meet the test of requiring a hearing [*MacLean v. Strathroy-Caradoc (Township)* 2017 CarswellOnt 21406].
4. The legislation and related jurisprudence make it clear that it is not sufficient that appellants raise land use issues in the notice of appeal. Such issues have to be worthy of adjudication and the responsibility falls on the shoulders of the appellants to demonstrate through their conduct in pursuing the appeal, including their gathering of evidence to make their case, that the issues raised in their notice of appeal justifies a hearing [Ontario Superior Court of Justice (Divisional Court) *Zellers Inc. v. Royal Cobourg Centres Ltd.* 2001 CarswellOnt 3362, (2001) O.J. No.3792, 108 A.C.W.S. (3d) 384, 156 O.A.C. 133, 22 M.P.L.R. (3d) 122, 42 O.M.B.R. 193].

[11] The Appellant's two reasons provided in his notice of appeal: 1. Objecting to the Bar and Restaurant beside India Town Super Market; and 2. Heard from a mutual friend, kitchen changes are being made internally, are clearly, on its face, not land use planning grounds. These reasons are not related to any specific grounds of non-conformity with applicable planning policy.

[12] The Tribunal finds that these do not constitute genuine or authentic planning reasons. There is no relevant or tenable issue raised that is worthy of adjudication. Furthermore, the Appellant's conduct is one of disinterest, failing to respond to the Motion or reply to the affidavit in support of the Motion to dismiss, and not bothering to appear at this scheduled hearing. He has failed to discharge the responsibility to gather evidence to make his case that the issues raised in the appeal justifies a hearing. He has failed to provide any apparent valid land use planning grounds in his appeal.

[13] The Tribunal finds that the Appellant's appeal does not disclose any apparent land use planning ground upon which the Tribunal could allow all or part of the appeal. The test pursuant to section 45(17)(a)(i) of the Act for the dismissal of the appeal without holding a hearing has been met.

ORDER

[14] The Tribunal orders that the City's Motion to dismiss the Appeal without holding a hearing is allowed.

[15] The Tribunal further orders that the Appeal is dismissed.

"T.F. NG"

T.F. NG
MEMBER

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Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

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