

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: October 17, 2016

CASE NO(S): PL160356

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

Appellant: 1143849 Ontario Inc.
Appellant: M & M Distribution Inc.
Appellant (jointly): Penguin Investments Inc. Stephen-Mitchell Realty Ltd., Ledbrow Investments Ltd.
Applicant: TCI Realty Holdings Inc.
Subject: Minor Variance
Variance from By-law No.: 569-2013, passed on May 09, 2013
Property Address/Description: 5 Bermondsey Road and 1200 O'Connor Drive
Municipality: City of Toronto
Municipal File No.: A1229/15TEY
OMB Case No.: PL160356
OMB File No.: PL160356
OMB Case Name: 1143849 Ontario Inc. v. Toronto (City)

Heard: September 26-28, 2016 in Toronto, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel</u>
TCI Realty Holdings Inc. ("Applicant")	M. Bull
City of Toronto ("City")	C. Iltan
Penguin Investments Inc. ("Penguin")	K. Mullin

MEMORANDUM OF ORAL DECISION DELIVERED BY BLAIR S. TAYLOR AND STEFAN KRZECZUNOWICZ ON SEPTEMBER 28, 2016 AND INTERIM ORDER OF THE BOARD

INTRODUCTION

- [1] This Decision is effective from the date of oral issuance by the Board.
- [2] The Applicant owns the lands known municipally as 5 Bermondsey Road and 1200 O'Connor Drive ("Subject Lands") where it operates a manufacturing plant that was built in the late 1940s or early 1950s. The Subject Lands are located in an employment area, on a large lot, with frontage onto three streets: O'Connor Drive, Bermondsey Road, and Cranfield Road.
- [3] The Applicant made an application to the Committee of Adjustment ("Committee") seeking permission for a two storey addition to the existing plant and other changes to the existing condition.
- [4] The Applicant sought relief pursuant to s. 45(2) of the *Planning Act* ("PA") to enlarge the legal non-conforming use, and other relief pursuant to s. 45(1) of the PA from East York Zoning By-law No. 6752 and the new City Zoning By-law No. 569-2013 (which although Council adopted, is not yet in force or effect).
- [5] The Subject Lands are designated Employment in the City's Official Plan which permits manufacturing uses.
- [6] Under the East York Zoning By-law, the Subject Lands are split zoned: the west portion is zoned HPI which allows manufacturing; the east portion is zoned MCI which, though it allows the assembly of manufactured goods and materials, does not permit manufacturing.
- [7] The Subject Lands are also split zoned under City Zoning By-law No. 569 2013, but with a twist: while manufacturing is permitted in the west portion, the east portion falls within what is described as a "hole" in the By-law with no zoning.

[8] Cumulatively, the relief sought at the Committee from the two zoning by-laws was to authorize the expansion of the manufacturing use on the east portion of the Subject Lands pursuant to s. 45(2) of the PA, and then pursuant to s. 45(1) of the PA to authorize variances for height, south side yard setback, parking, additional loading bays, lot coverage, and Floor Space Index ("FSI").

[9] The requested variances were recommended for approval by the City Planning Department (with four conditions of approval), and were supported by the City's Economic Development and Culture Department.

[10] Notwithstanding objections from neighbouring businesses, the Committee authorized the variances as requested with the recommended conditions of approval.

[11] Three appeals were filed, all from abutting property owners to the south of the Subject Lands.

[12] Shortly before the hearing two appeals were withdrawn leaving Penguin as the sole appellant. For the reasons set out below, the Board, having heard the evidence and the submissions of counsel, dismissed the appeal in part, authorized all the variances (as amended) with amended conditions of approval based on a revised site plan, revised elevations, and a new parking supply of 191 spaces and issued an Interim Order.

DECISION

[13] The Subject Lands are occupied by a manufacturing plant that appears to predate any planning regulation.

[14] The Applicant seeks to make a significant reinvestment in its physical plant and equipment including a two storey addition at the south side of the Subject Lands abutting in part the Penguin property.

[15] In order to get a building permit from the City, the Applicant requires relief from both City Zoning By-law No. 569-2013 and the East York Zoning By-law No. 6752 for:

- A recognition of the legal non-conforming manufacturing use of the east portion of the Subject Lands pursuant to s. 45(2) of the PA; and
- B pursuant to s. 45(1) of the PA relief for:
- height of the addition at 17.5 m, at 19.5 m for the silos and high roof access, and at 22.5 m for the mechanical penthouse, whereas 15 m is permitted, with an allowance for a further 5 m for a mechanical penthouse.
 - south side yard setback of 1.0 m whereas 3.0 m or 6.0 m are required;
 - parking both on and off site of 176 spaces whereas 205 or 282 are required onsite;
 - a loading space and a loading ramp on Cranfield Road and two loading bays on Bermondsey Road;
 - lot coverage of 72% where 65% is allowed; and
 - FSI of 1.17 where 1.0 is allowed.

[16] In the lead up to the hearing, the Applicant commissioned a new parking study to deal with the shift change surge in parking, commissioned a new loading study, negotiated a five year parking lease with one of the abutting land owners (who was an appellant) for at least 32 parking spaces with the apparent potential of 45 to 49 parking spaces, and retained an urban designer/architect who investigated sight lines to the Penguin property, investigated the grade between the Subject Lands and Penguin's property, detailed the use of stairwells and air ducts in the southerly side yard, did a preliminary shadow study with regard to the Penguin property, prepared a landscape plan for the O'Connor streetscape, and prepared revised elevations for the O'Connor street façade.

[17] During the course of the hearing, the Board heard expert land use planning evidence on behalf of the Applicant, expert land use planning and economic development evidence on behalf of the City, and expert land use planning evidence on behalf of Penguin. In addition, the Board heard expert transportation evidence from the Applicant's transportation planning engineer, expert evidence from the Applicant's urban designer and architect, and evidence from the Applicant's President and in-house legal counsel.

[18] The Board notes that Penguin's land use planner, in the face of the amended application to increase the parking supply expert evidence provided on the Applicant's behalf on the proposed grades between the two properties, the function and location of air ducts and stairwells in the side yard, the fact that 60% of the side wall of the addition would be 2.8 m from the lot line, the new streetscape plan, and the new elevations for the O'Connor façade, professionally and appropriately acknowledged that the changes made by the Applicant had addressed many of the planning issues she had originally identified arising out of the Committee decision. As such, she provided her proposed set of draft conditions of approval to the Board for its consideration (Exhibit 24).

FINDINGS

[19] The Board finds that the development application is consistent with the 2014 Provincial Policy Statement inasmuch as the proposed development represents an intensification of the manufacturing use on the Subject Lands, and that such intensification will contribute to and reinforce the manufacturing cluster in the immediate area, and support the food and beverage manufacturing sector in the City.

[20] Similarly the Board finds that the development application conforms to the Growth Plan for the Greater Golden Horseshoe, as an intensification of the manufacturing use within the built up area of the City.

[21] The Board finds that the amended application (parking supply) is minor pursuant to s. 45(18.1) of the PA as the amended parking relief sought is less than that sought in

the original application, and therefore no further notice is required. With regard to s. 45(2) of the PA, the Board finds that the manufacturing use has been on the Subject Lands from the late 1940s or early 1950s, and the proposed expansion is reasonable, appropriate, and desirable as the Subject Lands are designated Employment, the expansion will contribute to the Employment Area, and the proposed facility design conforms to the Official Plan policies and Urban Design Guidelines.

[22] With regard to the relief sought pursuant to s. 45(1) of the PA, the Board finds that the variances both individually and cumulatively satisfy the four tests for the following reasons.

[23] The Subject Lands are designated Employment and are in proximity to major roads, major highways, and public transit.

[24] The proposed height of the addition is not uniform. Attachment 2, being Exhibit 25, illustrates that the height of most of the proposed addition will be 17.5 m, which is required for the proposed two storey manufacturing operation. Only a small portion of the height is for the mechanical penthouse at 22.5 m and the silos and roof access stairways at 19.5 m. Moreover, the silos will be screened and are located away from O'Connor Drive.

[25] The south side yard setback at 1.0 m is not continuous. The 1.0 m condition reflects proposed stairwells and ducts. The main wall will be setback at 2.8 m for about 60% of the length of the proposed addition.

[26] There are no issues with sight lines or shadowing on the Penguin lands.

[27] The revised parking variance represents a more conservative approach and utilizes a parking lease with an abutting landowner for additional parking potentially in the range of 45-49 parking spaces.

[28] The Board finds that the variances are desirable for the appropriate development of the Subject Lands as a manufacturing operation on employment lands that the City seeks to support through its economic development activities and land use planning policies.

[29] The Board finds that there are no unacceptable adverse impacts and that the variances are minor in nature.

[30] Thus the Board will dismiss the appeal in part, and authorizes the variances subject to the conditions of approval found in Attachment 1 (Exhibit 26).

[31] With regard to the parking requirement, the Board finds that the proposed 191 parking spaces are appropriate in the circumstances. The Board heard expert testimony from Terry Wallace that the parking need arising from the development proposal was 191 spaces. That expert evidence was uncontested.

[32] The Board also heard evidence from Mr. Wallace, Susanna Riggs, and others that the potential parking supply (both onsite and offsite) was 204 spaces.

[33] The Board is of the view that the parking requirement for the Subject Lands should meet the parking demand, rather than the potential supply of parking, arising from the proposal.

[34] Hence the Board is satisfied with condition 4 on Attachment 1, and that the conditions of approval represent an appropriate balance between certainty and flexibility sought by the parties.

[35] Additionally, the Board heard evidence from Michael Spaziani with regard to the design of the O'Connor Drive and south side yard elevations (see Exhibit 16, page 6).

[36] Mr. Spaziani testified that these elevations represent refinements in the building design that, although apparently agreed to in principle by City staff, (save and except for

confirmation on colour and materials), have not yet been adopted as amendments to the Applicant's site plan.

[37] To the Board, these refined elevations better embody the policies of the Official Plan and the Urban Design Guidelines.

[38] Accordingly the Board will withhold its Final Order on this matter, pending written confirmation from counsel for the Applicant that the site plan application to the City has been amended to substantially incorporate the elevations found in Exhibit 16, page 6.

[39] Inasmuch as City Zoning By-law No. 569-2013 is not in force or effect at this time, the Board pursuant to s. 87(1) of the *Ontario Municipal Board Act* will authorize the requested variances contingent on the City Zoning By-law No. 569-2013 coming into force and effect.

[40] Attachment 1 (Exhibit 26) and Attachment 2 (Exhibit 25) form part of this Interim Order.

"Blair S. Taylor"

BLAIR S. TAYLOR
MEMBER

"Stefan Krzeczunowicz"

STEFAN KRZECZUNOWICZ
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board
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Revised Conditions to Variance - 5 Bermondsey Road & 1200 O'Connor Drive

- This decision is subject to the following condition(s):
 - (1) The maximum height of the building addition and silos shall be as shown on Site Plan Exhibit No. 25 as attached to this Decision.
 - (2) The owner shall provide streetscaping on the abutting public right-of-ways to the satisfaction of the Director of Community Planning, Toronto and East York District.
 - (3) The owner shall enter into an agreement to secure the above noted streetscaping, including posting of any financial securities, to the satisfaction of the City Solicitor.
 - (4) The applicant/owner shall provide a total of 176 191 parking spaces to serve the site/development, both on-site, within the city boulevards, and off-site on the property municipally known as 33 Cranfield Road or such other location within 300 m of the site, all to the satisfaction of the Acting Manager, Traffic Planning, Transportation Services, Toronto and East York District.
 - (5) The minimum setback from the southerly lot line shall be 2.8 metres, with the exception that no more than 40% of the length of the southerly wall of the building addition may have a minimum setback from the southerly lot line of 1 metre, and provided that:
 - (i) there shall be no encroachment within the 2.8 m minimum setback within 16 metres of the front wall of the building addition facing O'Connor Drive; and
 - (ii) such encroachments shall only be for the purposes of stairways, ducts and other building services.

Exhibit:	26
File #:	

