

ISSUE DATE:

**June 27, 2013**



PL130340

Ontario  
Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 33(4) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant: 471477 Ontario Ltd.  
Subject: Neglect of council to make a decision on an application for a demolition permit  
Property Address/Description: 2968 Islington Avenue  
Municipality: City of Toronto  
OMB Case No.: PL130340  
OMB File No.: PL130340

**APPEARANCES:**

**Parties**

471477 Ontario Ltd.

**Counsel**

M. Virginia MacLean

**MEMORANDUM OF ORAL DECISION DELIVERED BY R. ROSSI ON JUNE 3, 2013 AND ORDER OF THE BOARD**

[1] 471477 Ontario Ltd. ("Applicant") has appealed to the Ontario Municipal Board ("Board") the decision of the Etobicoke York Community Council ("Council") that has continued to defer consideration of the Applicant's request for a demolition permit for the dwelling located at 2968 Islington Avenue. The Applicant requested a permit to demolish a two-storey detached residential dwelling on October 29, 2012. The Council considered the application at its meeting on January 22, 2013; it deferred consideration to its April 9, 2013 meeting and at that meeting, it deferred consideration to a September 10, 2013 meeting.

[2] No one appeared in opposition. The Applicant's counsel, Virginia MacLean, advised the Board that the Applicant has no plans to reconstruct the existing dwelling that is proposed to be demolished. The lot will remain vacant as the future plans for the property are to change the current R4 zoning to a Commercial designation and to incorporate the subject property into the adjacent property, which is currently a plaza.

[3] The Applicant contends that the existing dwelling is unsafe. Supporting this position were two witnesses: a structural engineer and a building official from the City who appeared under summons. There is a walkway along the south boundary of the plaza next to the subject building, which is used by plaza employees and the public. The Applicant argues that if the structure is not demolished and it fails because of its poor condition, the public could be harmed. There is urgency, in the submissions of the Applicant's counsel and supported by the two witnesses, to the lawful removal of the existing dwelling sooner rather than later. The entire lot is proposed to be graded with crushed stone and left vacant until it can be used for commercial uses.

[4] City of Toronto Municipal Code [Chapter 363, Article II "Demolition Control" Subsection D (1)] requires that the application be referred to Council for consideration if no building permits are issued to erect replacement buildings on the property. This was done as the Applicant had not submitted a building permit application for a replacement building. In that case, By-law No. 1009-2006 and the Municipal Code requires Council to issue or refuse the demolition permit. However, that same By-law permits Council to impose any reasonable conditions that have regard to the nature of the residential property, including the preservation of significant natural features (there are none) as well as requiring the erection and maintenance of structures and enclosures.

[5] In the December 19, 2012 City Staff Report (on file), Toronto Building provides Council with a number of options of which the third option makes the most practical sense in this case; that is, approval of the application to demolish the subject dwelling with four conditions:

1. That a construction fence be erected in accordance with the provisions of the Municipal Code, Chapter 363, Article III if deemed appropriate by the Chief Building Official.
2. That all debris and rubble be removed immediately after demolition.
3. That sod be laid on the site and be maintained free of garbage and weeds in accordance with the Municipal Code Chapter 623-5 and 629-10, paragraph B.
4. That any holes on the property are backfilled with clean fill.

[6] At this hearing, the Applicant proposed to replace sod – a more expensive and higher maintenance item – with crushed stone in the third condition, which the Board heard is a better option.

[7] At its January 22, 2013 meeting, Council requested that the District Manager, Municipal Licensing and Standards, Etobicoke York District, attend and inspect the property to determine if any Notice of Violation is warranted; that his inspection include an opinion on the roof and mould conditions of the existing dwelling; and to report back to Council at its April 9, 2013 meeting. At the April meeting, the Council deferred consideration of the matter until September 10, 2013. The Board determines that without any reason given by Council to delay consideration of this matter for another five months; with no evidence that Council will consider the matter in September and with evidence showing that Council could delay consideration of the request again; and with evidence before it that establishes a genuine safety issue for people walking in proximity to the dilapidated structure, the Board determines that the permit should be issued.

**ORDER**

[8] The Board orders that the appeal is allowed and the demolition permit should be issued subject to the above-cited four conditions.

“R. Rossi”

R. ROSSI  
MEMBER