

DECISION AND ORDER

Decision Issue Date Monday, April 30, 2018

PROCEEDING COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): 983724 ONTARIO LIMITED

Applicant: ALEX BOROS DESIGN INC.

Property Address/Description: 77-79 NASSAU ST

Committee of Adjustment Case File Number: 17 176384 STE 20 MV (A0662/17TEY)

TLAB Case File Number: 17 255558 S45 20 TLAB

Hearing date: Thursday, March 15, 2018

DECISION DELIVERED BY S. GOPIKRISHNA

APPEARANCES

Name	Role	Representative
Alex Boros Design Inc	Applicant	
983724 Ontario Ltd	Appellant	Simon Van Duffelen
Ernest Weintraub	Party	

INTRODUCTION AND BACKGROUND

Ernest Weintraub is the President of 983724 Ontario Limited, and the Registered Owner of the lands municipally known as 79 Nassau Street, in the City of Toronto. 79 Nassau is home to a used car sales business which operates from an existing two storey portable office, which is the subject of the Appeal.

The Appellants put forward a proposal to the Committee of Adjustment to maintain the existing two storey portable office building. This application was heard by the Committee of Adjustment on 11 October, 2017, and was refused.

The Applicants/Appellants appealed to the Toronto Local Appeal Body (TLAB) on 30 October, 2017. The Appeal was heard on 15 March, 2018.

MATTERS IN ISSUE

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW: Chapter 40.10.20.10 (1) (A), By-law 569-2013

A portable office use is not permitted in a CR (Commercial/Residential) zone. In this case, a portable (used car sales) office will be maintained on the subject property.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

Minor Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

Section 45(2)

Upon Appeal, the TLAB, upon any such application where any land, building or structure, on the day the pertinent by-law was passed, was lawfully used for a purpose prohibited by the by-law, may permit:

Legal Non-Conforming Use And Other Relief Applications– S. 45(2)(a)

i) the enlargement or extension of the building or structure, if the use that was made of the building or structure on the day the by-law was passed, or a use permitted under subclause (ii) continued until the date of the application to the committee, but no permission may be given to enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the by-law was passed, or

(ii) the use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed, if the use for a purpose prohibited by the by-law or another use for a purpose previously permitted by the committee continued until the date of the application to the committee;

Uses Defined Generally by the By-Law – S. 45(2)(b)

Where the uses of land, buildings or structures permitted in the by-law are defined in general terms, may permit the use of any land, building or structure for any purpose that, in the opinion of the Panel, conforms with the uses permitted in the by-law. R.S.O.1990, c. P.13, s. 45 (2).

EVIDENCE

The Appellants were represented by Mr. Simon Van Duffelen, who is a lawyer. Mr. Ernest Weintraub, the Appellant and the owner of 983724 Ontario Limited, and Mr. Alex Boros, the Expert Witness were both in attendance.

Mr. Van Duffelen started with a Motion requesting that the hearing be adjourned for a period of 6 months. The reason given was that new information had been received from the City of Toronto, shortly before the TLAB hearing, which advised the Appellants that an application had to be brought before the Committee of Adjustment about the Legal Non-Conforming Use respecting the vehicle dealership. The specific variance before the TLAB, restricted to the portable office at 79 Nassau, would not be resolved until the larger issue of the garage's non-conforming use would be resolved.

The Motion stated that while the intention of the application behind the application the COA had been to maintain the existing two storey portable office building for the used car sales lot, the practical intention was to enable to the applicant make some internal modifications by installing sanitary facilities inside the portable office. The Motion then stated while that there was no doubt about the fact that the used car

**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna
TLAB Case File Number: 17 255558 S45 20 TLAB**

dealership is a legal non-conforming use, going back to 1965, it had never been formally recognized as such by the City . When the portable office was erected in 2002, the then property owner (different from Mr. Weintraub) neglected to make an application to extend the legal non-conforming use of the used car dealership to the new portable office.

Mr. Van Duffelen explained that even if the Appeal before me were successful, nothing could be done to implement the results of the successful appeal because the larger issue of legal non-conforming use would still remain unresolved. The 6 month period adjournment would help his client apply to the COA to address the issue of legal non-conforming use before returning to the TLAB to resolve the appeal related to the variance mentioned previously.

The alternative would be to allow the Appeal to proceed as scheduled.

After consulting with the Staff, I informed the Appellants that the request for a 6 month adjournment represented an unusual challenge from a process perspective since the Committee of Adjustment and the TLAB couldn't have simultaneous carriage of a given file, even if it was to address different issues, as was the case here- The Section 45(1) component respecting only the Trailer would have to be effectively being dealt with by TLAB while the Section 45(2) non-conforming use of the entire Vehicular Operation would be addressed by the COA in parallel, if the Motion were approved. However, TLAB's process required that the file be open either before the COA or the TLAB, but not both. I advised Mr. Van Duffelen to have a discussion with his client and make a decision on how they wanted to proceed- they had the option of withdrawing the Appeal or proceed to the oral hearing on the Appeal. Either way, the path would be clear from a process point of view, since there would be only one file for 79 Nassau before the COA.

The Appellants elected to proceed with the hearing and offer oral evidence.

Mr. Weintraub was the first witness. He was sworn in before he discussed the history of the proposal. He explained how his uncle, Mr. Gustav Fisher, had bought the two bungalows at 77 and 79 Nassau Street as well as the rear yards of 71, 73 and 75 Nassau Street in 1965. The bungalows at 77 and 79 were demolished and the rear yards of 71,73 and 75 Nassau were joined to the lot formed jointly by 77 and 79 Nassau Street. A few businesses were then set up on this site, including a used vehicle business under the name of "Discount Trading". After some time, Mr. Fischer ceased operation of Discount Trading and then rented the property at 77 and 79 Nassau together with the rear lot to arm's length third parties, who then established their own used car sales business called "Nassau Motors." When the lot become available for rent in 1987, Mr. Weintraub rented 77 and 79 Nassau Street, together with the rear lot from Mr. Fischer, to establish his company called Downtown Car and Truck Rentals.

At that point in time, there was only a "draft, uninsulated , tin shack" on the lot which was used as an Office. This shack was then demolished and replaced by a small office trailer. The business then outgrew the trailer and was replaced in 2002 by a portable, two storey office which came to be located on the east side of the property at 77-79

**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna
TLAB Case File Number: 17 255558 S45 20 TLAB**

Nassau Street- this property is still existent and continues to function as an office today. According to Mr. Weintraub, no permit was required for the office in 2002.

Mr. Weintraub bought the properties at 75,77 and 79 Nassau after the demise of his uncle in 2013. The title of 75 Nassau Street was merged with that of 77 and 79 Nassau Street. In 2014,983724 Ontario Limited (Mr. Weintraub's company),successfully applied to the COA for severing the property at 75 Nassau Street. After the severance, 75 Nassau Street, including the washroom and storage space, was sold to an arm's length third party. The Downtown Car and Truck Rental Business, now renamed Wheels4Rent Corp., continued its business at 77-79 Nassau Street location without interruption.

According to Mr. Weintraub, the only practical connection between the business at 77-79 Nassau Street and the property at 75 Nassau Street, was the use of the washroom located at the rear of the building at 75 Nassau Street. Through the application now before the TLAB, Mr. Weintraub had applied to the COA to construct a washroom in the existing portable office and connect it to the municipal water and sewer system. Mr. Weintraub ended by saying that the proposed construction would not impact the exterior of the office building in any way.

Mr. Alex Boros, an Architect by profession, was then sworn in an Expert Witness.

Mr. Boros again reviewed the history of the application and its being refused by the COA. He said that the main consequence of the refusal would be that his client would be forced to move, the property behind at 71, 73 and 75 Nassau Street would become a vacant and orphaned property, in the middle of Kensington Market, as it had no access to a public road.

Mr. Boros then went onto present evidence about how the proposal satisfied the 4 tests in Section 45(1) as follows:

- The proposal maintains the general intent and purpose of the Official Plan because it is in a vibrant commercial zone, and has been in use as vehicle sales and rental business for more than 50 years.
- The proposal maintains the general intent and purpose of the Zoning By-Law because it fits within the Commercial Zoning Designation where the portable structure is an ancillary use.
- The proposal is desirable for the appropriate development and use of land because it has been in place since 1965, without no negative impact on neighbours and the neighbourhood.
- The proposal is minor because the portable structure and its use, fit into the multi commercial uses in Kensington Market. The extent of the impact of the development on the neighbourhood is "nil" and the proposal is therefore minor.

Mr. Boros recommended that the proposal be approved. Two letters in support of the application were also introduced as evidence. In his closing statement, Mr. Van Duffelen echoed Mr. Boros and requested that the proposal be approved.

ANALYSIS, FINDINGS, REASONS

The Motion argued at the beginning of the hearing, namely to adjourn the hearing before the TLAB in order to enable the Appellant to return to the COA for recognition of the legal non-conforming use of the entire vehicular operation, was refused for procedural reasons. While not explicitly stated in the Rules, the practice has been for the COA or the TLAB to not process a given file simultaneously- the responsibility rests with either but never both at any given point in time.

Based on the evidence given the Appellants, this Appeal to TLAB seemed moot because of the restricted nature of the Appeal, which focuses only on the Trailer. The advice given to the Appellants by the City just before the hearing stated that the legal non-conforming use application would have to address the entire vehicular operation as opposed to focusing on the trailer alone- the trailer may prove to be just one component of a larger application.

Given these developments, I conclude that the legal non-conforming use application focusing only on the trailer is premature. The evidence before me clearly indicates that any decision authorizing the Appeal would not be effective nor implementable because of the larger issue of the legal non-conforming use of the vehicle business that the Committee of Adjustment will have to decide on. Based on the lack of adequate information about the impact of the larger application respecting the entire vehicular operation on the subject matter of this appeal, namely the trailer, I believe that it would be appropriate to refuse the Appeal before me, which I emphasize, is restricted to the trailer.

By way of comments, it is important for oral evidence to discuss the applicability of higher level policies, such as the Provincial Policy Statement (PPS) and the Greater Golden Horseshoe Growth Policy, before discussing the compatibility of the proposal with Section 45(1) of the Planning Act.

There is nothing in this decision, that applies to future applications before the COA regarding legal non-conforming use of the vehicular operation, nor may be construed as a comment on such applications. Specifically, no inferences may be drawn about the legal non-conforming use of the vehicular operation under Section 45(2) of the Planning Act based on the refusal of this Appeal.

DECISION AND ORDER

The Toronto Local Appeal Body orders that:

**Decision of Toronto Local Appeal Body Panel Member: S. Gopikrishna
TLAB Case File Number: 17 255558 S45 20 TLAB**

1) The Appeal respecting 79 Nassau Street is not allowed.

2) The Decision of the Committee of Adjustment dated 11 October, 2017, is confirmed. The following variance is refused:

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

Chapter 40.10.20.10 (1) (A), By-law 569-2013

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X



S. Gopikrishna

Panel Chair, Toronto Local Appeal Body