

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, July 17, 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): SIAMAK JANNATDOUST

Applicant: CARLO PIEROZZI

Property Address/Description: 155 CHAMPAGNE DR

Committee of Adjustment Case File Number: 15 216117 000 08 MV

TLAB Case File Number: **18 132160 S45 08 TLAB**

**Hearing date:**      Wednesday, July 11, 2018

## DECISION DELIVERED BY T. Yao

### APPEARANCES

Name	Role	Representative
Siamak Jannatdoust	Appellant	Paul Bottos
1698004 Ontario Inc.	Party	
Michael Tedesco	Expert Witness	
Sabrina Sgotto	Expert Witness	

### INTRODUCTION

Auto Gallery Inc, is a business run by Siamak Jannatdoust, specializing in high end used cars. Mr. Jannatdoust said that he sells Porches and other makes;

sometimes he has the only specimen in Canada of a combination of model and engine. After Auto Gallery purchases a car for its inventory, it repairs the body, when necessary, and invariably details the car for selling. All work is done off site from the subject property; there are no on-site facilities other than offices. If there is a sale, the paperwork is transacted at 155 Champagne and the car sent to a third-party mechanic for the fitness certificate. There is a warranty on safety items, honoured at premises having mechanics with whom Mr. Jannatdoust has regular dealings. Sometimes the purchaser takes possession of the car from the showroom; sometimes the car is delivered to the customer. Customers can come from as far away as Edmonton. This is not the typical “dealership” tied to a global automaker.

In February, 2015, Auto Gallery moved from a former location to Unit 7, 155 Champagne Drive. As an auto dealer in Ontario, Auto Gallery is required to prove to OMVIC<sup>1</sup> that it has a business license from the City of Toronto. The business license issuer, Terry Van Elswyk, forwarded Auto Gallery’s application to the Buildings Department, which treated the application as if a building permit was being applied for. The Buildings Department found Auto Gallery needed three variances for its premises and the license was refused. In addition, Auto Gallery received a Notice of Contravention for carrying on a business without a license.

<b>Table 1. Variances needed by Auto Gallery</b>			
		Required	Proposed
Under current City-wide By-law 569-2013			
1	Minimum number of parking spaces for entire multi-tenant building of 7679 m <sup>2</sup>	101	94
2	Use not permitted		
Under former North York By-law 7625			
3	Minimum number of parking spaces for entire multi-tenant building of 7679 m <sup>2</sup>	207	94

The company applied for three minor variances on April 9, 2015. On February 28, 2018, the Committee of Adjustment refused the requested variances and Auto Gallery appealed, bringing this matter to the TLAB.

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<sup>1</sup> OMVIC (Ontario Motor Vehicle Industry Council) enforces the Motor Vehicle Dealers Act, 2002 on behalf of the Ontario government through the Ministry of Government and Consumer Services.

## MATTERS IN ISSUE

Section 45(1) of the *Planning Act* allows me to “authorize such minor variance from the provisions of a zoning bylaw”, provided that in my opinion the four tests are met. In this case the “provision” is the list of uses for an EH zone, and this list does not contain the words “Vehicle Dealership”.

Any use not permitted is prohibited. I summarize my analysis as follows: Looking at the two Zoning By-Laws 569-2013 (new) and 7625 (old), Auto Gallery fits the definitions containing the word “dealership”. A Vehicle Dealership is not permitted in the new by-law, but it is permitted in the old. While the EH list of permitted uses does not permit a Vehicle Dealership, it does permit a “Warehouse”, under which Auto Gallery’s could reasonably be classified.

An automobile warehouse permission does not suffice for Auto Gallery; it needs permission for the **Vehicle Dealership** use for OMVIC purposes; even if it already fits the Warehouse definition.

Because it is already permitted under Warehouse, additional permission as a Vehicle Dealership is minor and meets the intent of the new zoning by-law. Since the plan examiner did not require a use variance from the old zoning by-law it meets the old by-law’s intent as well.

Fitting the Warehouse definition has a very important other consequence—it allows the variance to maintain the Official Plan intent because Employment Areas are restricted to manufacturing, warehousing and office uses. Closer examination of relevant Official Plan policies shows that a variance permitting a Vehicle Dealership is desirable for the appropriate use of an industrial/warehousing EH building, (which is the fourth test for a minor variance).

Thus, the request for variance #2 meets the statutory tests under the *Planning Act*.

## EVIDENCE

The evidence at this hearing was unopposed and uncontroverted. It consisted of testimony by Sabrina Sgotto, land use planner and Michael Tedesco, transportation engineer. I qualified both as expert witnesses. Mr. Jannatdoust himself also testified.

## ANALYSIS, FINDINGS, REASONS

### The number of parking spaces

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The two variances dealing with this issue may be quickly dealt with. When I first read the file, I got the impression that Auto Gallery's cars would be scattered around the building with perhaps a few cars indoors that you could see from the outside through shiny glass windows. This is the conventional type of car showroom that most people are familiar with. But this impression is wrong. From the outside, one has no idea that Unit 7 contains cars except for small signs "Auto Gallery Inc.". If you peek through the windows you can see office space, but the cars are indoors in a back room. The reason for no outdoor storage, according to Mr. Jannatdoust, is that leaving a car for even ten minutes outside if it is raining or dusty will ruin the detailing. "99.99 percent" (Mr. Jannatdoust's words) of customers are not the "walk-in" kind; they search out the business over the internet and make an appointment.

It should be noted that the examiner's notice required Auto Gallery to study the entire building; not just the unit it occupies. When 155 Champagne Drive was constructed in the 1980s, North York required 90 spaces for the whole building (7679 m<sup>2</sup>); the builder constructed 94 spaces; thus, there are four extra spaces. Parking space demand was calculated on a sliding scale:

- 1 space per 42 m<sup>2</sup> for the first 2750 m<sup>2</sup> (the higher rate);
- 1 space per 190 m<sup>2</sup> thereafter.

The initial 2750 m<sup>2</sup> of gross floor area produces a higher parking space demand than the next tranche of gross floor area. Most of the rest of the gross floor area of the building (4929 m<sup>2</sup>) enjoys a lower rate of parking space demand because it is expected that multiple unit ownership will have peak demands at different times of the day.

The Buildings Department treated Mr. Van Elswyk's referral as a request to conduct a zoning examination by its usual methodology, which is to assume each unit is a separate freshly constructed space in a building with many party walls. Since each of the units, except for the one leased to Unican Fastening Products (another tenant at the building), is below the 2750 m<sup>2</sup> threshold, most of the building now is subject to the higher rate. The building as a whole has lost the benefit of the lower rate. It is this method of calculation that produces the need for variances 1 and 3 in Table 1.

Under the rate of 1 space per 42 m<sup>2</sup>, Auto Gallery is predicted to create a demand for 25 parking spaces. According to Mr. Jannatdoust, there are just two employees and the customer (there is never more than one at a time) who may need a space, which would create a real life peak demand of three spaces on most days.

Mr. Tedesco's report refined the prediction for parking spaces in three ways:

He recalculated the overall demand by using parameters that took into consideration that the other tenants include York Construction Academy (trade school), Maxamin (home building contractor's head office), Imaginus (poster retail use), and Mr. Case (warehouse). These uses produce less parking space demand than the manufacturing/industrial factor used by the plan examiner.

He interviewed all the other tenants and asked them what their peak demand was<sup>2</sup>;

He surveyed the site on five different days.

A combination of the three suggests the peak demand for the total building to be about 40 to 50 spaces. After they had read Mr. Tedesco's report, Traffic Planning/Right-of-Way Management informed the Committee of Adjustment that it had no objections<sup>3</sup>. Mr. Tedesco said that at the Committee of Adjustment there was **no** discussion of the parking space issue and I agree with him that variances 1 and 3 meet the statutory tests and should be granted.

### **Chronology of Planning Documents**

June 25, 1952	North York Zoning By-law 7625 (the old by-law), zoning the lands M3
June 2006	OMB issues orders approving current Official Plan, designating lands Employment District
May 9, 2013	Toronto City Council enacts Zoning By-law 569-2013 (the new by-law), zoning the lands EH, with partial OMB approvals February 7, 2017 <sup>4</sup> , and March 2018
Dec 18, 2013	Toronto City Council enacts Official Plan Amendment 231 replacing the term Employment District by Employment Area. Partial OMB approval December 20, 2016. These further set out restrictive polices limiting uses to manufacturing and warehousing.

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<sup>2</sup> For example, Auto Gallery predicted it would need five parking spaces.

<sup>3</sup> Letter dated February 21, 2018

<sup>4</sup>Because Auto Gallery's application of April 2015 preceded the OMB Order of 2017 partially approving Zoning By-law 569-2013, Auto Gallery argued that it should not have to seek variances under 569-2013. (Its application was in 2015.) I cross checked "Chapter 200.5.10.1.(1)" cited by the plan examiner, with the numbers of regulations approved in the OMB decision, and did not find a match.

## **Zoning definitions of dealership**

The Planning Report of City planner Adam Pressick, February 20, 2018, states:

The subject property is located on the south side of Champagne Drive within the Duke Heights Business Improvement Area. The property is zoned EH 1.0 (r45) in the new City of Toronto Zoning By-law No. 569-2013 and M3 in former North York Zoning By-law 7625. The Official Plan designates the site as Employment Areas.

The applicant requests a variance to permit a vehicle dealership whereas this is not a permitted use under Zoning By-law 569-2013. Staff are of the opinion that the application is not in keeping with the intent of Zoning By-law 569-2013 and therefore it is recommended that the application be refused.

Ms. Sgotto pointed out that this analysis does not go beyond the observation that a Vehicle Dealership is not in the list of permitted EH uses, but Mr. Pressick did not have the benefit of nearly four hours of evidence from three witnesses. However, it is implicit in his analysis that Auto Gallery is a Vehicle Dealership, so I should begin by confirming that assumption.

In By-law 569-2013 (new):

“Vehicle Dealership” means premises used for the sale, rental or lease of vehicles displayed or stored on site, excluding construction or agricultural vehicles.

In By-law 7625 (old):

“Motor Vehicle Dealership means the use of land, buildings or a structure for the parking or display of operable new and/or used motor vehicles for sale, rental or lease and may include as accessory uses, facilities for the servicing and/or mechanical repair of motor vehicles and/or motor vehicle body repair shop. The parking or display of said motor vehicles shall not be considered as open storage.

As set out previously, the site is zoned M3 (Industrial Three) under the old by-law, which permits a Motor Vehicle Dealership and obviously no variance is needed. Thus, under both by-laws, Auto Gallery is indeed a dealership-type use.

## **The other permitted EH uses**

We now examine the intent of the zoning by-law. The EH zone (Employment Heavy Industrial Zone) in By-law 569-2013 permits the following uses without conditions:

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Ambulance Depot  
Animal Shelter  
Bindery  
Building Supply Yards  
Carpenter's Shop  
Chemical Materials Storage  
Cold Storage  
Contractors Establishment  
Custom Workshop  
Dry Cleaning or Laundry Plant  
Fire Hall  
Fuel Storage  
Industrial Sales and Service Use  
Laboratory  
All Manufacturing Uses except: 1) Ammunition, Firearms or Fireworks Factory; 2) Crude Petroleum Oil or Coal Refinery; 3) Explosives Factory; 4) Tannery  
Police Station  
Public Utility  
Public Works Yard  
Recovery Facility Service Shop  
Shipping Terminal  
Vehicle Depot  
Vehicle Repair Shop  
Warehouse  
Waste Transfer Station

It permits the following with conditions:

Cogeneration Energy  
Crematorium  
Medical marijuana production facility  
Open Storage  
Outside Operations  
Propane Transfer  
Handling and Storage Facility  
Renewable Energy  
Transportation Use  
Vehicle Service Shop

The definition of "Warehouse" in 569-2013 is:

"Warehouse" means premises used for keeping or storing goods or commodities, to which the **general public** does not have access, and which may also be used for the distribution of the goods or commodities. (my bold)

Auto Gallery's use also fits the definition of Warehouse in the old 7625 by-law, whose M3 zone permits a Warehouse:

"Warehouse" means a building or structure or part of a building or structure where goods are stored or kept for distribution to other locations, **or where goods or materials are stored or kept for gain**; but does not include the keeping of storage of chemicals . . . (my bold)

Ms. Sgotto's opinion as an urban planner was that Auto Gallery's business could be classified as a Warehouse use with an ancillary office use. Indeed, the name "Auto Gallery" suggests a carefully curated stock of cars to which "general public" does not have access, since only a few people are interested in and can afford a Porsche, and the premises have de facto access only by appointment. It does not have the traffic associated with a conventional dealership; there is no large exterior sign, no publicly visible and accessible display room; there are no cars outside to entice the drive-by public; and there is no parts or service department. The whole purpose of keeping polished cars in an interior space is to "distribute" them.

So, Ms. Sgotto is correct, and Auto Gallery fits either the dealership or warehouse definitions of both bylaws.

To apply two of the tests, Auto Gallery's business model could be considered a Warehouse use, which is already permitted, and so the inclusion of a Vehicle Dealership under EH uses is **minor** and fits with the **general intent of the EH zone**. This would not be so for a more conventional automobile dealership.

However, for OMVIC purposes, it is necessary that Auto Gallery have specific authorization for a Vehicle Dealership use; not a Warehouse use; and so now we consider the remaining two tests.

### **The Official Plan and "desirable" tests**

155 Champagne is in an Employment Area and Section 2.2.4.1 states that these are areas for:

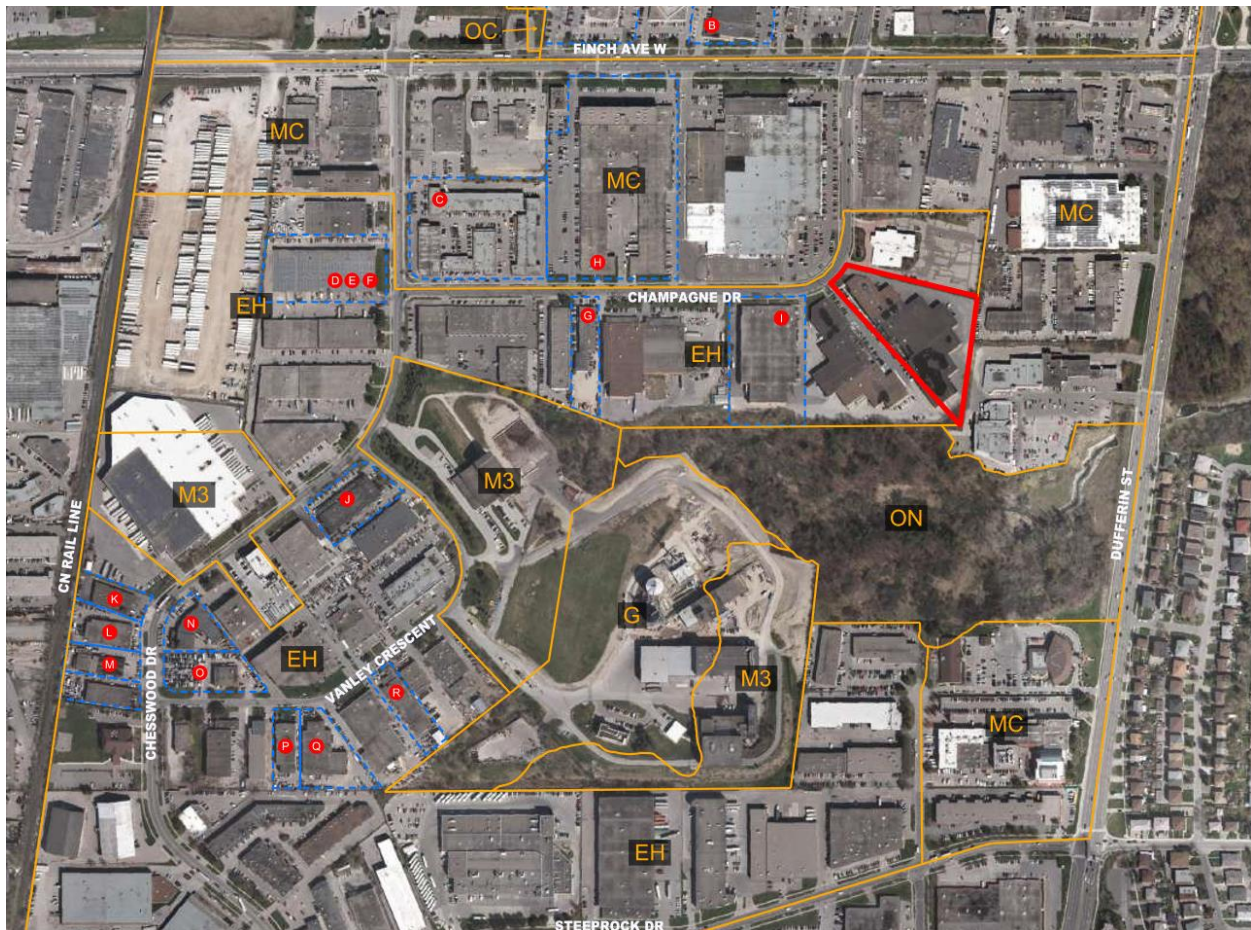
clusters of business and economic activities including, but not limited to, manufacturing, warehousing, offices, and associated retail and ancillary facilities.

Since I have found that Auto Gallery is a warehousing use, one of the three activities for which Employment Areas are reserved, it meets the general intent of the Official Plan. Moreover under 2.3.4.2 (a) to (l), several specific policies are met.



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- (b) Protect and preserve Employment Areas for current and future business and economic activities;
- c) Provide for and contribute to a broad range of stable full-time employment opportunities;
- f) Maintain and grow the City's business tax base;
- k) Contribute to a balance between jobs and housing to reduce the need for long-distance commuting and encourage travel by transit, walking and cycling;



This is not a sensitive use. It will not remove space from the stock of industrial buildings. When and if Auto Gallery ceases to be a tenant at Unit 7 in the future, there will still be 1050 m<sup>2</sup> of high ceilinged space in an area that is protected by the Official Plan policies from intrusion of sensitive uses. It pays business taxes and offers employment. It is a consumer of other vehicle related services such as repair shops and detailing. Its employees can get to work from the Finch bus service. The first two factors are very important; by being a proper business/warehousing activity, it fits in with

and does not disrupt the other uses of the building. Therefore, I find the inclusion of Vehicle Dealership in the EH list is **desirable for the appropriate use of the building**. The appropriate use is any of, or a mixture of the EH uses listed on page 7.

Employment areas are for ‘clusters’ of business and economic activities. The aerial photo on the previous page show that 155 Champagne is close to 18 other sites with vehicle related uses (marked with letters inside dark dots), including other Vehicle Dealerships, body shops and motor vehicle repair business. I am satisfied that these form a cluster of such uses and Auto Gallery contributes to economic activity that is the mission of Employment Area lands. This is further demonstration of maintaining of the **Official Plan’s general intent**.

Especially with the absence of evidence to the contrary, I accept Ms. Sgotto’s planning conclusions on all points in issue, including consistency with the Provincial Policy statement and conformity with the Growth Plan.

## **DECISION AND ORDER**

I authorize the variances set out in Table 1 on the following conditions:

1. The Vehicle Dealership use is confined to Unit 7 at 155 Champagne Drive.

No outside storage of vehicles is permitted.

X



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Ted Yao  
Panel Chair, Toronto Local Appeal Body  
Signed by: cc3709c200231d9f