

ISSUE DATE:

October 31, 2008



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PL080631

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

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Atef Abdul-Samad
Applicant: Rita De Zen and Dino Facin
Subject: Minor Variance
Variance from By-law No.: 22-90
Property Address/Description: 20 Mill St.
Municipality: Town of Orangeville
OMB Case No.: PL080631
OMB File No.: PL080631
Municipal No. A-12/08

APPEARANCES:

Parties

Counsel*/Agent

Atef Abdul-Samad

F. Yehia*

Johan DeGeus

H. DeGeus

DECISION DELIVERED BY S. J. STEFANKO AND ORDER OF THE BOARD

Atef Abdul-Samad ("Appellant"), the owner of 12-16 Mill Street in Orangeville has appealed the decision of the Committee of Adjustment which granted a parking variance and a rear yard setback variance for property immediately to the north of his and municipally known as 18-20 Mill Street ("Subject Property" or "Subject Site").

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BACKGROUND

The Subject Property is a vacant lot located in Orangeville's downtown area and is approximately 7.3 metres wide by a depth of 24.4 metres (24 x 91 feet). Unlike a number of properties in the downtown, it has no municipal lane running along the rear of the property to accommodate possible rear yard parking. Johan DeGeus, the current owner, wishes to develop the lands with a one-storey building to be used as a retail

plant store. In order to make the proposed use economically viable, the proposed building would have dimensions of 6.1 metres by 24.4 metres (20 by 80 feet), a height of 4.9 metres (16 feet) and a floor area of 148.6 square metres (1,600 square feet). As a result of the building size the following two variances ("Designated Variances") were sought and obtained from the Committee of Adjustment:

- (a) Permission to have a rear yard setback of 3.5 metres whereas 7.5 metres is the minimum ("Rear Yard Variance").
- (b) Permission to reduce the on-site parking spaces to 0 whereas 3 are required ("Parking Variance").

ISSUE

The issue to be determined is whether the Designated Variances comply with the provisions of s. 45 (1) of the *Planning Act* ("Act")?

THE EVIDENCE PRESENTED

Heidi Murray, a planner with the Town of Orangeville gave expert land use planning evidence in support of the Designated Variances. In her view, each variance met the four tests set out in s. 45 (1) of the Act. Mr. Harry DeGeus also provided testimony in relation to the proposal. He explained in some detail, the nature of the business activity to be carried on and the rationale for the requested relief. In order to make the proposed retail use economically viable, a building, the size of what is proposed, must be constructed. It is this building size which creates the need for the variances in question.

Ms. Samad, the daughter of the Appellant, and Ms. Black, a principal with an insurance agency across the street from the Subject Site, spoken in opposition. Essentially, they were of the view that the proposal would have a negative effect on traffic and parking in the area. Ms. Samad was also concerned that the Subject Property could no longer be used by her father to pile winter snow on or for free parking by her father's tenants. No expert evidence was provided by the Appellant.

ANALYSIS

In matters of this type, expert evidence is of critical importance. At this hearing, the only expert evidence I heard was the planning evidence of Ms. Murray who supported the relief sought. There was nothing in her testimony, which I found to be illogical or inconsistent. Her testimony was clear and concise and I would be remiss to disregard it.

As for the parking and traffic matters raised by the Appellant, the evidence of Ms. Murray was that there was enough parking on Mill Street and in the nearby municipal parking lot to accommodate the requirements of the proposed retail store. Ms. Murray also stated that the proposal is subject to site plan approval which process would insure that the proposed structure would complement existing buildings along Mill Street.

As for the snow removal and loss of free parking concerns brought forward, let me say briefly that such factors have a distinctive hollow ring to them and should not have a bearing on this case. It is not responsibility of the owner of the Subject Site to provide land for the Appellant's snow removal and parking needs.

DISPOSITION

Based on all of the foregoing, I have no hesitation in accepting the expert testimony of Ms. Murray and concluding that the proposal would be a welcome addition to the downtown area of Orangeville. Accordingly, the appeal is dismissed and the requested variances are authorized.

It is so Ordered.

"S. J. Stefanko"

S. J. STEFANKO
MEMBER



COMMITTEE OF ADJUSTMENT

DECISION OF COMMITTEE WITH REASONS
RE APPLICATION FOR MINOR VARIANCE

Planning Act, R.S.O. 1990, c. P.13, ss. 45(8)

APPROVAL AUTHORITY: THE CORPORATION OF THE TOWN OF ORANGEVILLE

RE AN APPLICATION BY: Rita DeZen and Dino Facin

LOCATION OF PROPERTY: Part of Lot 2 and Part of Lot 3, Block 8, Registered Plan 138
18 – 20 Mill Street

PURPOSE OF APPLICATION: The applicants are requesting minor variances to reduce the minimum rear yard set back requirement from 7.5 metres (24.6 feet) to approximately 3.5 metres (11.5 feet) and to reduce the minimum required parking spaces from 3 to 0. The variances are required to permit the construction of a proposed retail outlet for the sale of plants.

WE, the undersigned, in making the decision upon this application have considered whether or not the variance requested was minor and desirable for the appropriate development and use of the land and that the general intent and purpose of the zoning by-law and the official plan will be maintained, or in the case of a change in a use of property which is lawfully non-conforming under the by-law as to whether or not this application has met the requirements of Section 45(1) of the Planning Act,

CONCUR in the following decisions and reasons for decisions made on the 7th day of May, 2008.

THE REQUEST IS HEREBY APPROVED

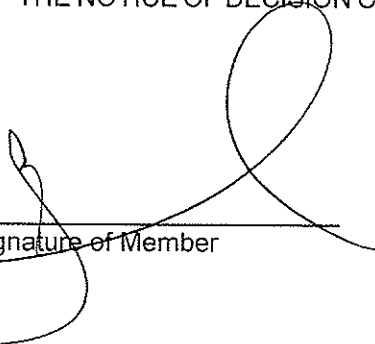
THIS DECISION:

IF **APPROVED**: IS SUBJECT TO THE CONDITIONS AND FOR THE REASONS SET OUT ON PAGE TWO OF THE NOTICE OF DECISION OF THE COMMITTEE OF ADJUSTMENT.

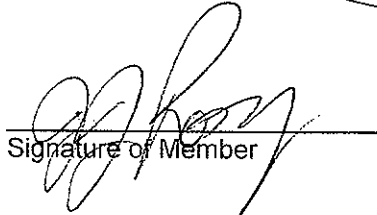
IF **REFUSED**: IS FOR THE REASONS SET OUT ON PAGE TWO OF THE NOTICE OF DECISION OF THE COMMITTEE OF ADJUSTMENT.


Signature of Member


Signature of Member

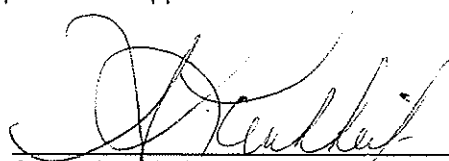

Signature of Member


Signature of Member


Signature of Member

CERTIFICATION
Planning Act, 1990, R.S.O. c. P.13, ss. 45(10)

I, Susan Lankheit, Secretary-Treasurer of the Committee of Adjustment certify that this is a true copy of the decision of the committee given on May 7, 2008 with respect to the application recorded therein.


Susan Lankheit, Secretary-Treasurer
Committee of Adjustment

This decision or any condition is subject to appeal to the Ontario Municipal Board by filing with the Secretary-Treasurer of the Committee of Adjustment a written notification, giving reasons for the appeal, accompanied by a cheque in the amount of \$125.00 payable to the Minister of Finance.

Only individuals, corporations and public bodies may appeal decisions in respect of applications for minor variance to the Ontario Municipal Board. A notice of appeal may not be filed by an unincorporated association or group. However, a notice of appeal may be filed in the name of an individual who is a member of the association or group on its behalf.

DATE DECISION MAILED: MAY 9, 2008

LAST DAY FOR APPEALING THIS DECISION: MAY 27, 2008

(Appeals must be received no later than 4:30 p.m. on the above date)

CONDITIONS: None

REASONS FOR DECISION: The variance as approved are considered minor in nature. It is the opinion of the Committee of Adjustment that the general intent and purpose of the Official Plan and Zoning By-law are maintained and the proposal is desirable for the appropriate development or use of the land, building or structure.