

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: November 25, 2016

CASE NO.: PL160462

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

Appellant:	1069878 Ontario Inc.
Applicant:	2322235 Ontario Inc.
Subject:	Minor Variance
Variance from By-law No.:	By-law No. 438-86
Property Address/Description:	1233-1239 St Clair Ave West
Municipality:	City of Toronto
Municipal File No.:	A173/16EYK
OMB Case No.:	PL160462
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OMB Case Name:	1069878 Ontario Inc. v. Toronto (City)

Board Rule 107 states:

107. Effective Date of Board Decision A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

Heard: September 8, 2016 in Toronto, Ontario

APPEARANCES:

Parties

Counsel*/Representative

1069878 Ontario Inc.

Felice Battista

2322235 Ontario Inc.

B. Kussner *

City of Toronto

A. Suriano *

**MEMORANDUM OF ORAL DECISION DELIVERED BY DAVID L. LANTHIER ON
SEPTEMBER 8, 2016 AND ORDER OF THE BOARD**

HEARING AND ISSUE

[1] 1069878 Ontario Inc. (the “Appellant”) has appealed the decision of the Committee of Adjustment of the City of Toronto (the “City”) delivered on March 31, 2016 which approved the application for a number of minor variances set out below brought by 2322235 Ontario Inc. (the “Applicant”) to permit the construction of a three-storey mixed use building containing a Shoppers Drug Mart on St. Clair Avenue West.

[2] The hearing of this appeal proceeded on September 8, 2016. Counsel for both the Applicant and the City attended before the Board, and the Appellant was represented by its principal shareholder and officer, Felice Battista. No other party appeared in support of, or against, the Appeal. The Board heard expert land use and planning evidence from David McKay on behalf of the Applicant and from Anthony Hommik on behalf of the City who were both qualified as experts, and reviewed the documentary evidence set out in an Evidence Binder and Photographic Survey entered as Exhibits 1, 2 and 3 in the hearing. The Appellant’s evidence was composed of Mr. Battista’s oral evidence and some photographs filed as Exhibit 5. No planning evidence was provided to the Board by the Appellant in support of its position or in opposition to the expert planning evidence provided to the Board.

[3] The issue is whether the requested variances meet the four tests set out in s. 45(1) of the *Planning Act* (the “Act”) and should be authorized by the Board. The Board must accordingly be satisfied that:

- (a) the general intent and purpose of the Official Plan is maintained;
- (b) the general intent and purpose of the Zoning By-law is maintained;
- (c) the variances are minor; and
- (d) the variances are desirable for the appropriate use and development of the land.

Additionally the variances must be consistent with the 2014 Provincial Policy Statement (“PPS”) and conform to the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”) for the subject area.

[4] At the conclusion of the hearing, the Board delivered an oral decision, with brief reasons, on the basis that the Board would provide such further reasons or modifications or amendments to those reasons which might subsequently be set out in this written Memorandum. The Board authorized the requested minor variances, (as amended for the purposes of corrections to the requested variances) with the single condition, for the reasons set out herein.

BACKGROUND AND REQUESTED VARIANCES

[5] The Applicant intends to demolish the existing building located on its property at 1233-1239 St. Clair Avenue West on the corner of the flanking street, Via Italia, (the “Subject Property”) for the purposes of constructing a new mixed use development with both retail and office space and containing, as the primary storefront, a Shoppers Drug Mart store. The property is located “two doors down” from the Appellant’s property at 1223 St. Clair Avenue West which has for a number of years had as a tenant, a Shoppers Drug Mart store.

[6] The Subject Property is designated “Mixed Use Area” in the Official Plan (the “OP”) which permits a broad range of commercial and residential uses within single or mixed use buildings and is also subject to an “Avenues” overlay which encourages growth and development supported by high quality transit services, urban design and street/traffic engineering practices that promotes safe, comfortable and attractive pedestrian use. The Subject Property is in an area subject to Zoning By-law No. 438-86 (the “Zoning By-law”) and is unaffected by the appealed Zoning By-law No. 569-2013. It is zoned “Mixed Commercial Residential” MCR T5.0 C2.0 R4.0

[7] The Applicant’s application for the minor variances was submitted for the purposes of accommodating the proposed design, and requested variances addressing setback, floor space index, parking, angular plane, entrance location and landscape

requirements. As of the date of issuance of the City's Public Hearing Notice the Applicant's Minor Variance Application requested the same series of seven variances relating to By-law No. 438-86 as submitted at this hearing subject to two minor numerical corrections. The requested variances before the Board, as amended, are thus as follows:

1. Section 8(3) Part 1 2 – Non-Residential Gross Floor Area of Zoning By-law 438-86

The maximum permitted non-residential gross floor area is 2.0 times the area of the lot (1,146.2 sq m).

The proposed building will have a non-residential gross floor area equal to 2.65 times the area of the lot (1,518.72 sq m).

2. Section 12(2) 479.(5)(b)(i) of Zoning By-law 438-86, as amended

The minimum required setback from any lot in an R or G district is 7.5 m.

The proposed building will be setback 0 metre from a lot in the residential zone to the south.

3. Section 12(2) 479.(5)(c)(i) of Zoning By-law 438-86, as amended

No part of any building be located closer than 1.5 metres from the flanking street

The proposed building will be located 0 m from the flanking street (i.e. Via Italia).

4. Section 12(2) 479.(7)(b)(i) of Zoning By-law 438-86 as amended

All parts of the building must be contained within a 60 degree angular plane projected over the lot at a distance of 7.5 m from a lot in a residential zoned district, at an elevation of 10.5 m above the average elevation of the ground directly above the setback.

The proposed building will not be contained within the angular plane.

5. Section 12(2) 479.(9)(a) of Zoning By-law 438-86 as amended

A minimum of 1.5 m of soft landscaping shall be provided along the rear lot line abutting a residential district.

A total of 0 m of soft landscaping along the rear lot line will be provided.

6. Section 4(4)(b) of Zoning By-law 438-86

A total of 10 parking spaces are required.

A total of 0 parking spaces will be provided.

7. Section 8(3) Part XI 1 – Flanking Street Entrances of Zoning By-law 438-86

No building shall front on or gain entrance from a flanking street.
The proposed building will have an entrance from a flanking street (Via Italia).

[8] The two numerical corrections relate to Items 1 and 6. The proposed gross floor area (“GFA”) requested in Item 1 was corrected to be **2.65 times** the lot size of **1,518.72 square metres** instead of 3.6 times a lot size of 2,035.85 square metres which was set out in the original application and Notice of Hearing. This discrepancy and correction actually resulted in a lower GF calculation from that originally applied for and approved. Item 6 incorrectly indicated that seven parking spaces were required when in fact the Zoning By-law required **10 parking spaces**, but the requested parking spaces remained at zero. In regards to these amendments to the variances, the Board is of the view that the changes made to the original application are minor and accordingly, pursuant to s. 45(18.1.1) of the Act, no further notice is required.

VARIANCES - EVIDENCE, CONTEXT AND ANALYSIS

[9] As indicated orally at the conclusion of the hearing, it is the finding of the Board that the evidence fully supports the approval of the requested minor variances in accordance with the Act. While the Board might not go so far as to say that this matter is some great distance removed from “a close call” on the evidence, as submitted by Counsel for the Applicant, the Board would indeed agree that the appeal, as it has been put before the Board, although raising some potential concerns, is not supported with sufficient, or any, planning evidence.

[10] Three notable aspects of the evidence accepted by the Board significantly impact upon the issues to be considered by the Board in determining whether the minor variances should be granted. The first of the notable points in evidence, which has been as has been noted by both planners who testified, is that the proposed development has, adjacent and to the rear of it, off the flanking street Via Italia, a “Green P” parking garage (the “Parking Garage”) that has a residential zoning designation. The fact that the Parking Garage is zoned Residential is a technical point

which both necessitates the minor variances and is relevant in the consideration of the tests under s. 45(1) of the Act. The Parking Garage also serves to contribute a significant supportive amenity to the commercial and retail operations on St. Clair Avenue West and the Subject Property, by providing much-needed parking services. This was noted by Mr. Battista himself. The position of the Parking Garage is significant as it represents a “buffer”, to use the term, between the development and the closest of the residences in proximity to the south of the Subject Property in the nearby residential neighbourhood. This is of significance in addressing the variances relating to the landscaping, the rear setback and the angular plane variances, and of course parking requirements.

[11] Secondly this development at the corner of St. Clair Avenue West and Via Italia has the good fortune, so to speak, of being situated at an advantageous intersection. This segment of St. Clair Avenue West has been specifically identified as “an intensified, transit-oriented urban environment” which should promote a “vibrant pedestrian realm and experience” in the St. Clair Avenue West Study. The flanking Street at the intersection, Via Italia, enjoys the benefit of a generously wide sidewalk area, as opposed to a more narrowed pedestrian sidewalk that is often seen on side streets of this nature in the City. This is of significance in addressing the variances relating to setback off of the flanking street and the entrance off of the flanking street.

[12] The third notable aspect of the evidence accepted by the Board is that the application for the development, which is in proximity to the sizable residential neighbourhood to the south, met with no opposition and in fact has enjoyed the benefit of support from the local residents and the Business Improvement Area in this area. City Council has also supported the decision of the Committee of Adjustment by directing representation on this appeal. On a preliminary review of the evidence, including the photographs, the proposed development easily fits within the streetscape and the neighbourhood, revitalizing and improving the current aging building and adding to St. Clair Avenue West and serving the adjacent residential neighbourhoods. While the adjudication of minor variance appeals is never a popularity contest this support, and the absence of opposition, speaks to the issue of potential adverse impact and

positive effect upon neighboring residents and property owners. There does not appear to be any significant adverse impact, which thus supports a finding that the variances are indeed minor and are desirable for the appropriate use and development of the lands.

[13] The Board was provided with, and considered, the details of the proposed construction as set out in the sketches, drawings and plans at Tab 3 of Exhibit 1 which give rise to the necessity of the requested variances. The Board heard the undisputed evidence that the primary features of the proposed construction as they relate to the seven requested variances are as follows:

- a) The building footprint occupied by commercial use is designed and intended to utilize the majority of the lot size. As a result, the maximum floor space index will exceed the maximum of 2.0 for non-residential use, as the building will occupy 2.65 square metres of the lot area. The location of the south wall of the building will result in a setback of 0.19 metres whereas a 7.5 metre setback would ordinarily be required along a Residential zoned property to the rear, with a minimum 1.5 metres of open space soft landscaping required. On the flanking street to the west there will be no setback and a setback of at least 1.5 metres would be required under the Zoning By-law. As well, the rear of the building would be required to be constructed within a 60 degree angular plane from the rear setback as it abuts a residential zoned district and soft landscaping would also be required along the rear south boundary. These proposed design and built-form elements relate to **Items 1, 2, 3, 4 and 5** on the list of variances
- b) The design of the building will result in a sizeable open and transparent streetscape face on the northwest corner of St. Clair Avenue West due to the use of windows and open space area above the entrance vestibule located at the northwest corner of the building for entry to the retail floor space for the Shoppers Drug Mart. The entrance to the upper floor office areas however will actually be located to the side, on the flanking Via Italia, where it will make

use of the wide expansive sidewalk area and proximity to the Parking Garage. A service entrance, stairs and freight area will front on St. Clair Avenue West. The design proposes the construction of hard and soft landscaping elements along the length of the west side of the building along Via Italia which both planners felt would greatly improve the connection of the building to the street. This layout for the exterior entrance on Via Italia to the office space (instead of the main street) gives rise to the necessity of the variance in **Item 6.**

- c) The proposed development does not include provision for any parking spaces given the fact that the size of the lot and the design of the proposed building results in the Subject Lands being maximized leaving no available space for parking spaces. This necessitates the variance in **Item 7.**

[14] As is the case in an application such as this which relates to new construction and development on the Subject Property, each of the minor variances are collectively required to allow for the construction of the dwelling in the final built-form set out at Tab 3 of Exhibit 1. As a result the Board has reviewed and considered the evidence as a whole in determining whether the variances should be collectively approved. The Board has also reviewed each of the individual variances, and heard evidence in regards to each, and has thus considered, and made findings with respect to, the individual variances in this Decision as reviewed in the course of the evidence. References to evidence and findings in relation to any one or more of the variances, without necessarily referring to all of the requested variances, should not be taken to mean that the Board has not considered the four tests as they apply to each of the individual variances in weighing all of the evidence, (much of which, again, applies uniformly to all of the variances).

[15] The Board has received the expert planning evidence of both planners, including the detailed comprehensive overview of the development and the variances provided by Mr. McKay. The Board accepts the planning evidence from both Mr. McKay and Mr. Hommik, each in its entirety, and is satisfied on that evidence that the four tests as set

out in s. 45(1) of the Act are met. In providing the oral decision and for the reasons set out herein, the Board was, and remains, satisfied that the variances individually and cumulatively are minor, are desirable for the appropriate use and development of this property, and maintain the general intent and purpose of both the OP and the applicable zoning by-law, including the additional special provisions relating to the St. Clair Avenue Study area identified by Mr. McKay. In making this finding the Board has considered, and accepts, the following evidence as it relates to the variances.

Gross Floor Area, Rear and Side Setbacks and Angular Plane

[16] In regards to the variance for the GFA, the Board notes that the variances, as corrected, are such that the proposed building will have a non-residential GFA equal to 2.65 times the area of the lot which is equivalent to 1,518.72 square meters. The Board has noted from the planning evidence that the proposed development is actually substantially less than the total mass that might be permitted for this property. The variance relates to the *non-residential* GFA and the Board confirms that in this case, it is not necessary for the entirety of this property to be fully mixed use such that it includes a residential use component. Mr. McKay's planning opinion was that the proposed Floor Space Index did not constitute overdevelopment, that there was no undue impact on any adjacent property and that, to the contrary, the mass of the proposed building would very much enhance and support the vitality of St. Clair Avenue West and be consistent with the existing streetscape. It was noted that the width of Via Italia also served to moderate the mass of the building, the design of which would constitute a significant enhancement of what is currently there.

[17] The variances relating to the rear setback, the flanking Street, and the angular plane have been considered by Mr. McKay, and corroborated by Mr. Hommik, and their planning opinion is that the general intent and purpose of the performance standards in the Zoning By-law relating to these three variances have certainly been met. These performance standards promote proper transitioning to nearby Neighbourhood designations. With specificity, Mr. McKay reviewed the Staff Report for the City Initiated Avenue Study at Tab 8 of Exhibit 1 which was intended to guide future development

along St. Clair Avenue West which includes the Subject Property, and which was intended to support “encourage intensification that reflects a mid-rise form and mitigates impacts of...new developments on the nearby low-rise residential *Neighbourhoods*”.

Mr. McKay has opined that the intent and purpose of this has been met. With the existence of the Parking Garage acting as a buffer or intermediary use, the proposed development is separated from the nearby residential areas, thus eliminating the kinds of transitional concerns or adverse impacts that might be a concern and which are ordinarily addressed with these three performance standards. Essentially the fact that the footprint and mass of the building will occupy almost the entire property, with only minimal space between this building and the adjacent building, is ameliorated by the fact that the Parking Garage is next-door and there are no concerns with a large built form immediately adjacent to residences or the absence of a “step-back” to adjacent residences. Mr. McKay testified that if the calculations of angular plane were completed in relation to the closest residential property (as opposed to the adjacent residential-zoned Parking Garage) the variance for angular plane would not be required.

[18] The unusually wide sidewalk on Via Italia also minimizes any adverse effects from the reduced side setback and allows for the type of transition that is contemplated by the Zoning By-law. The intent and goal for the flanking street setback, as described by Mr. McKay, is to promote wider public sidewalks to a width of 4.5 metres, and in this case the wider sidewalk that exists allows for this to be achieved with the variance. Mr. McKay concluded, and Mr. Hommik concurred, that this flanking street set-back variance maintained the general intent and purpose of the Zoning By-law.

[19] Due to the nature of the development as reviewed by Mr. McKay and Mr. Hommik, it is clear that the use of this building for commercial and retail will not represent a negative use of the lands and in fact will be adding a desirable and appropriate development to St. Clair Avenue West on a site that is currently in need of regeneration and which will provide new and upscale retail and commercial space. This reasonably promotes growth and development on the street and accordingly supports the OP from a planning perspective and represents the type of intensified, transit-

oriented urban environment encouraged in this location as well as the “vibrant pedestrian realm and experience”.

[20] By adding a highly appropriate built-form to a major artery, with good massing and transitioning features (ie. in relation to overlook, shadow impact, light, design, height) between the intended mixed uses and residential neighbourhood, the proposed development with the variances, also meets the general intent and purpose of the OP. Mr. McKay testified that the design represented an architecturally interesting building with fenestration and articulation and detail that was both desirable and consistent with the built-form structures along St. Clair Avenue West and the OP built-form policies. With the existence of the Parking Garage there were, in fact, no real abutting residential properties and thus no issue of adverse impact or compatibility.

[21] Given the positive planning factors reviewed by Mr. McKay and Mr. Hommik, the manner of transition of the built-form to the residential neighbourhood, the absence of any claim of adverse impact by any near-by property owners (other than the Appellant), the consistency of the planned development relative to other buildings along St. Clair Avenue West, and positive regeneration of the site consistent with the municipal planning objectives the planning evidence before the Board is that the three variances relating to these performance standards maintain the intent and purpose of the OP and Zoning By-law, are minor, and are desirable for the appropriate use and development of the Subject Lands.

Landscaping

[22] The minor variance relating to the absence of landscaping at the rear lot is also similarly minor and represents no concern from a planning perspective according to both expert planners. For essentially the same reasons, and upon the same evidence relating to the angular plane and rear and side yard setback, the elimination of any soft landscaping along the rear south side of the lot (adjacent to the parking garage would not represent an adverse impact upon the intent of this standard to allow for transitioning. The same comments regarding the overall built-form of the proposed

building as they relate to the four tests would apply equally to the elimination of the soft landscaping on the rear lot area. Additional landscaping as set out in the drawings and plans, to the north (on St. Clair Avenue West) and to the west on Via Italia will meet the general intent and purpose of the OP and the Zoning By-law and represent a positive addition to the streetscape and demonstrate that the design addresses the built-form policies of the OP.

Parking

[23] The Board finds that the variance with respect to parking requirements should be granted and accepts the evidence of the planners in this regard. As noted at the outset, the advantageous location of the Parking Garage immediately adjacent to the development itself eliminates, quite obviously, much of any adverse impact or concern that might exist in this regard. As noted by Mr. McKay, Section 4 of the Regulations relating to Zoning By-law No. 438-86 (Tab 18, page 281 of Exhibit 1) expressly contemplates other off-site parking being considered in certain circumstances, though that, in itself, would not automatically assist the Applicant in this case due to the Residential zoning classification for the Parking Garage. The Board would note that the nearby existence of public parking facilities will not automatically entitle an applicant to waive compliance with a zoning by-law performance standard relating to parking requirements and the evidence must be taken as a whole in determining the impact and appropriateness of non-compliance. In this case however, the evidence before the Board is further supported by the Parking and Loading Assessment Study that was completed in consultation with the City.

[24] The results of that Parking Study, as set out in Tab 4 of Exhibit 1, indicate parking availability within a 300 metre radius of the Subject Property on both weekdays and Saturdays. There are four Green P parking garages within that radius. Assessing parking availability just in the adjacent Parking Garage revealed that at peak demand times on weekdays, 169 parking spaces were available with only 99 spaces used leaving a surplus during such peak demand of 70 spaces. On Saturday, only 61 parking spaces were utilized during peak demand leaving 108 excess parking spaces.

The evidence thus confirms that even at peak period, readily accessible parking spaces will be conveniently located within mere steps of the office space in the building for which the parking spaces are required. If the larger radius availability is used, the Study confirms that respectively 99 and 155 spaces would be available at peak demand times. This excludes additional street parking. The study was reviewed by the Traffic Planning department of the City which then confirmed that it had no concerns with respect to the Item 6 variance relating to parking and supported the application in this regard.

[25] The Board accepts this evidence and the responsive evidence of Mr. McKay and Mr. Hommik, that the elimination of the required parking spaces under the circumstances, with the study, will not represent a concern with respect to this development and that the four tests are satisfied with respect to this specific variance. It was their opinion that the evidence as a whole relating to the immediate availability of parking spaces next door, far in excess of the required ten spaces, confirmed that the intent and purpose of this performance standard of the Zoning By-law was being addressed and that the variance was minor. In the larger context, recognizing the existence of the St. Clair Avenue streetcar line, and the overall objectives and priorities of the Official Plan, the variance from the required ten parking spaces maintained the general intent and purpose of the OP and was desirable for the use and development of the Subject Property. Mr. McKay noted that adding additional parking on the Subject Property, given the generous supply of parking spaces in proximity to the building, would actually result in an inefficient use of the land and the resources for parking that already exist, and therefore would be less desirable.

Entrance

[26] Finally, due to the design of the proposed building, the addition of another entrance off the flanking Street, Via Italia, in addition to the main retail entrance fronting St. Clair Ave West, necessitates a further variance which prohibits entrances from a flanking street in order to ensure that direction and focus of entrances and pedestrian traffic is directed towards the major arteries instead of the smaller side streets. The

Board accepts the evidence of the planners on this variance and finds that this final variance also meets the four tests.

[27] It was Mr. McKay's opinion that the general intent and purpose of this performance standard in the Zoning By-law is, as indicated above, to prioritize the main artery façade and front of the building for pedestrian traffic and avoid the re-direction of entry and development away from the front to the side streets and that this intent and purpose would be maintained with this variance. Generally due to the overall design of the building and the resultant side-by-side placement of the entrance to the upper floor offices beside the entrance to the Parking Garage, street pedestrian traffic would be more limited in any event. The very open and transparent nature of the St. Clair Avenue side of the building, and the interior atrium design of the retail vestibule still supported the emphasis and focus on the "main face" of the new building on the St. Clair Avenue West main thoroughfare and the location of the second entrance on the wider than normal sidewalk area on the east side of Via Italia (and in proximity to the Parking Garage) would eliminate most, if any, concerns about the redirection of pedestrian traffic or undue focus to, or on, the flanking street. Mr. McKay noted the addition of plantings and seating to the east of the building would improve the appearance and utility of Via Italia and that the overall design greatly improved the existing aesthetics and design of the flanking street (which is shown in photos to contain street patio fencing) without diminishing the focus of the development on St. Clair Avenue West. As such this variance, as a component of the overall design certainly meets the built-form policies of the OP and is desirable for the appropriate use and development of the Subject Property and is minor in nature.

EXPERT PLANNING OPINION EVIDENCE

[28] The above review and analysis has already covered the specifics of the evidence from both expert Planners accepted by the Board. Both Planners, in the course of their evidence also provided general expert opinions.

[29] In the course of Mr. McKay's testimony, after reviewing all of the facts, and providing his professional opinion with respect to the seven variances individually, he summarized generally that they met the general intent and purposes of both the Zoning By-law and the OP and were appropriate for the use and development of the Subject Land. He also concluded that for all of the reasons provided the variances supported the development and the City's planning policies, was appropriately scaled and massed, effectively used the land and existing infrastructure, would not result in overdevelopment or undue or adverse physical impact on the nearby low density residential areas to the south and therefore were collectively and individually, minor.

[30] Mr. Hommik, as a senior planner with the City was very familiar with the general vicinity of the area in and around the Subject Property and along St. Clair Avenue West and dealt with a number of files relating to development here. Mr. Hommik described the process undertaken in the Planning Department with respect to the Applicant's proposal and confirmed that there were no concerns regarding the requested variances.

[31] In his evidence Mr. Hommik reviewed s. 4.5 of the OP as it related to Mixed Use areas and reviewed each of the development criteria governing development on the Subject Property. It was his opinion that the building would be of a high quality, located on a major transit line serving a large residential neighbourhood to the north and south, and would be providing jobs. He noted that there were a number of three storey buildings similar to the proposed development and that this building would not be out of character with the kinds of development occurring on St. Clair Avenue West and agreed with Mr. McKay that due to the location of the Parking Garage there was no need for the usual step-down transitional elements that might ordinarily be required under the Zoning By-law. Mr. Hommik opined that the design of the building framed and animated the corner quite well, contributed to a much improved streetscape with pedestrian friendly features, had good site access and effectively integrated service areas. As a result Mr. Hommik's opinion was that the OP criteria had been met. In regards to the Zoning By-law Mr. Hommik's evidence echoed that of Mr. McKay's, and noted that the mass of the building could have been far greater than what was proposed and that collectively the

performance standard variances were minimal, individually and collectively, and were in keeping with the intent and purpose of the Zoning By-law.

[32] On the basis of his own assessment of the municipal planning legislation, having heard Mr. McKay's evidence and having reviewed the Provincial Policy Statement 2014("PPS"), and very familiar with the OP and the Zoning By-law, Mr. Hommik concurred with Mr. McKay's expert opinion that the proposed development and variances met the four tests of the Act. Mr. Hommik concluded that the development represented good planning, created no adverse impact on any other property, was in the public interest, and should be approved.

[33] Neither Planner provided anything of exceptional note, or anything to indicate, that the proposed variances were not in conformity with the Growth Plan for the Greater Golden Horseshoe or inconsistent with the PPS. Both experts opined that the proposed development, as supported by the City, is consistent with the PPS as it addresses the intentions and goals of the PPS in promoting intensification and redevelopment, particularly along major arteries, and makes use of existing infrastructure, and maintains and enhances the viability and vitality of major streets in Toronto. As they further confirmed, the variances are in conformity with the Growth Plan.

THE APPELLANT'S EVIDENCE

[34] Mr. Battista provided limited evidence in support of the appeal which raised a limited list of concerns. Mr. Battista testified that he was a pharmacist and opened a pharmacy in 1981, with the Shoppers Drug Mart store eventually installed in the Appellant's building just down from the Subject Lands. The new development has thus impacted upon Mr. Battista's tenants. Mr. Battista noted that historically, the parking problem on the street was eventually improved over the years with the construction of parking facilities including the Parking Garage, but he complained that traffic and street parking issues still existed due to the narrowing of St. Clair Avenue West for transit improvements.

[35] In this context, Mr. Battista provided generalized complaints that: there were still not enough parking spaces to support this development including “handicap parking”; there would be traffic problems arising from the additional retail and office space; building shadow would extend onto the property of nearby neighbours including his own home; congestion and delivery truck problems would occur due to the design of the building, including vehicle noise that would wake neighbours; and “hydro and drainage” and utility issues for his own building due to the proximity of the development (Mr. Battista provided some photos in support of this latter concern). Mr. Battista also referred to alleged issues relating to easement access to his property over the Applicant’s property. Mr. Battista also pointedly testified that the area did not need “another medical building” and that the new development would “interfere” with the practices of other medical doctors and cardiologists having offices nearby.

[36] When pressed on this issue of utilities affecting his building, Mr. Battista conceded that as the City Building Department and utility agencies reviewed the drawings and construction there would likely be no impact on the utilities to the Appellant’s building and when pressed, provided no evidence to support any real concern that the proposed development would, in any way, impact on the security of the Appellant’s building. The Board also cannot accept that Mr. Battista’s concerns regarding any impact the building will have on his personal residence on the back street (parallel to St. Clair Avenue West) are reasonable and there is no evidence to support the suggestion that the building will have any adverse impact on his residence, or any other property for that matter. Despite his generalized concerns the Appellant provided no planning evidence of any kind to challenge the evidence and opinions of the planners or to support any of his general concerns as noted above. The Board cannot accept any of Mr. Battista’s general concerns as legitimate or substantiated and finds that the evidence of the Applicant and the City, including the Parking Study, do not support his assertions.

[37] Mr. Battista’s limited evidence to the Board relating to his concerns, and as challenged in cross examination, suggest that the Appellant’s objections are, in part, related to competition and may stem from prior litigation. There was some suggestion

that the opening of the Shoppers Drug Mart in the new development, and the departure of current tenants of Mr. Battista's building, is an underlying motive for the Appellant for the appeal. The Appellant's concerns with respect to adding another development on St. Clair West with "more" medical offices are not concerns that the Board considers relevant under the circumstances and do not represent legitimate planning concerns which alter the planning evidence provided by both planners in this hearing. As revealed in Exhibits 6 and 7, the Appellant's issue of an easement was fully adjudicated by the Ontario Superior Court of Justice and the Appellant's suit against the Applicant claiming a prescriptive easement was denied. In cross-examination counsel raised the point that there is "bad blood" between the parties. This latter circumstance is not really relevant to this proceeding and it is not necessary for the Board to make a finding in regards to the motive behind the appeal, but the Board does find that the Appellant's objections relating to competition or issues of easement access have no merit.

SUMMARY, FINDINGS AND ORDERS

[38] To summarize, the Board is of the view that the planning evidence of Mr. McKay and Mr. Hommik, the supporting evidence reviewed above and evidence before the Board in oral testimony and in the Exhibits in relation to the seven variances, individually and collectively, satisfy the four tests in s. 45(1) of the Act. The Board finds that the development criteria for Mixed Use Development within the OP have been satisfied. The overall design of the building, its location on St. Clair Avenue West, the extent to which the development has been adjusted and refined, in collaboration with City staff, the inclusion of additional landscaping and benches on Via Italia, and the nature of this beneficial development as added to this main Street in the City, the nature of the built-form and the necessity of recognizing transitional performance standards, have all been considered. The Board finds that this planning evidence establishes that the general intent and purpose of the OP will certainly be maintained. The general intent and purpose of the Zoning By-law for the reasons indicated will also be maintained. The variances are minor and are desirable for the appropriate use and development of the Subject Property, and as such the variances represent good planning.

[39] In regards to the matter of conditions, the Board accepts the opinion evidence that no conditions are required or recommended for this development other than the condition that the Building will be constructed substantially in accordance with, and in conformity to, the drawings and plans submitted to the City (subject to amendments to the interior design).

ORDER

[40] The Board Orders that the appeal is dismissed and the seven variances to Zoning By-law No. 438-86 as corrected and set out in paragraph 7 of this Decision are authorized subject only to the condition that the development will occur, with the corrected variances, substantially in accordance with the drawings as set out in Exhibit 1, Tab 3, as they relate to the external elements, and without restriction for any amendments to the internal design.

[41] As noted, under the circumstances considering that the gross floor area correction results in a reduction, and the inadvertent and incorrect reference to the number of required parking spaces under the Zoning By-law are minor errors, the Board is satisfied that pursuant to the *Planning Act* these two correction amendments do not require any further notice.

“David L. Lanthier”

DAVID L. LANTHIER
MEMBER

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

Ontario Municipal Board

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