

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



**ISSUE DATE:** May 09, 2016

**CASE NO(S):** PL151037

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

Appellant: 2129152 Ontario Inc.  
Applicant: 1118038 Ontario Ltd.  
Subject: Minor Variance  
Variance from By-law No.: 7625  
Property Address/Description: 2 Brisbane Road  
Municipality: City of Toronto  
Municipal File No.: A-0715/15NY  
OMB Case No.: PL151037  
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OMB Case Name: 2129152 Ontario Inc. v. Toronto (City)

**Heard:** March 16, 2016 in Toronto, Ontario

**APPEARANCES:**

<u>Parties</u>	<u>Counsel*/Representative</u>
2129152 Ontario Inc.	D. Wood*
1118038 Ontario Ltd.	L. Dime

**DECISION DELIVERED BY R. G. M. MAKUCH AND ORDER OF THE BOARD**

[1] 1118038 Ontario Ltd (the "Applicant") wishes to construct a two storey addition on the northeast portion of the existing industrial building on its property known municipally as 2 Brisbane Road.

[2] It applied for and received authorization for the following variances from the Committee of Adjustment (“COA”) for the City of Toronto:

1. **Chapter 32(6)(a), By-law No. 7625**

The minimum required front yard setback is 9.00m.  
The proposed front yard setback is 3.00m.

2. **Chapter 32(6)(a), By-law No. 7625**

The minimum required side yard setback (street lot line) is 7.50m.  
The proposed east side yard setback is 3.00m.

3. **Chapter 6A(16)(b), By-law No. 7625**

The minimum required loading space size is 11.00m x 3.60m, together with an area of the same minimum length and width as a loading space in front of the loading space which is serves.  
The proposed loading space size is 11.00m x 4.00m, however the length of the area in front is 7.80m.

4. **Chapter 6A(16)(b), By-law No. 7625**

Loading spaces shall be provided on the same lot as the building or structure for which he loading space are required, IA within the side or rear yard, and shall abut the building or be located within the building.  
The loading spaces are in the front.

5. **Chapter 6A(2)a, By-law No. 7625**

The minimum required number of parking spaces is eighty-five (85).  
The proposed number of parking spaces is sixty (60).

[3] This authorization was subject to the condition that site plan approval be obtained and that the requirements of the Transportation Services Division be satisfied.

[4] 2129152 Ontario Inc. (the “Appellant”), which owns the property at 4646 Dufferin Street on the east side of Brisbane Road across from the subject site, filed an appeal with this Board. The grounds for the appeal are that there is not sufficient parking on the site for the current or proposed use and that the application is not consistent with the Provincial Policy Statement 2014 (“PPS”) policy 1.2.6.1 in respect to the proposed increase in operations on the site and has not demonstrated consideration of the Ministry of the Environment and Climate Change “Land Use Compatibility (D Series)

Guideline, Compatibility Between Industrial Facilities and Sensitive Land Uses” (“MOECC D-Series Guidelines”).

[5] The Appellant also maintains that the application for the authorization of the variances triggers the necessity for the consideration of the D-1 and D-6 Guidelines to assess land use compatibility between the Applicant’s facility and the surrounding land uses including the Appellant’s facilities.

[6] It must be noted that an appeal to this Board pursuant to s. 45 of the *Planning Act* (“Act”) is a hearing *de novo* and the onus of establishing that the four tests under s. 45 (1) of the Act have been met remains on the Applicants notwithstanding that the COA approved the application. The four tests under s. 45(1) of the Act, require the Applicants to satisfy the Board that the variances:

- 1) maintain the general intent and purpose of the Official Plan
- 2) maintain the general intent and purpose of the zoning by-law
- 3) are desirable for the appropriate development or use of the land building or structure
- 4) are minor

[7] The evidence in support of the appeal and in opposition to the application consists of the testimony of David A. McKay, Ralph Bond, and Nigel M. Taylor, the land use planning consultant, transportation planner and environmental scientist (with expertise in air quality issues), respectively, for the Appellant.

[8] The only evidence in support of the application and in opposition to the appeal, was the testimony of Larry Dime, an employee of the Applicant, who explained that Toronto Research Chemicals (“TRC”) was in the business of producing “small batch” research chemicals for the manufacturing industry. The company, according to Mr.

Dime, intends to double its business and needs the additional space to house employees and to create additional laboratories.

[9] He explained that the Applicant also owns the property known municipally as 65 Alness Street and that the Applicant intended to demolish the existing building on the property in order to provide additional parking for 2 Brisbane Road. He also explained that the company receives and makes deliveries in both the morning and afternoon using delivery vans and that there are no heavy trucks used to make such deliveries. The packages being delivered are quite small and could fit in an automobile glove compartment.

[10] Mr. Dime also acknowledged that parking has been an issue and did not dispute Ralph Bond's un-contradicted evidence that the parking demand for the existing building was currently not being met satisfactorily and that it would not be appropriate to further reduce the parking requirements for the proposed addition. It is noted that Mr. Bond had recommended that 65 Alness Street be used to accommodate parking for the subject site in his report. The Board is not satisfied that Variance No. 5 respecting the reduction in parking spaces meets the four tests.

[11] Mr. Taylor, the environmental scientist for the Appellant, provided the Board with a detailed overview of the MOECC D-Series Guidelines and their applicability to this application.

[12] The Board is satisfied based on the evidence of Mr. McKay, the Appellant's land use planning consultant that the application is in conformity with the provisions of the Growth Plan for the Greater Horseshoe, which sets out broad based policies for the development of urban areas.

[13] The application is also generally consistent with the policies set out in the "PPS", although Mr. McKay is of the view that there is inconsistency with policy 1.2.6.1, which requires that major facilities and sensitive land uses should be planned to ensure they are appropriately designed, buffered and/or separated from each other to prevent or

mitigate adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term viability of major facilities. The TRC facility as an industry is considered to be a “major facility” under this policy. Mr. McKay opines that there is an obligation on the part of the Applicant to demonstrate consistency with policy 1.2.6.1 of the PPS through a study to determine whether the permitted uses in the area, including those on the site would be adversely affected.

[14] The subject site is located in an “Employment Area” designation in the City’s Official Plan and is also designated as being within an “Employment District”, which is a structural designation according to Mr. McKay, intended to protect and promote economic activity. The designation contemplates offices, manufacturing, warehousing, distribution, research and development facilities, utilities, media facilities, parks, hotels, retail outlets ancillary to the preceding uses and restaurants and small scale stores and services that serve area businesses and workers. Furthermore, Official Plan Amendment No. 231, currently under appeal, designates the subject site “Core Employment”, while the Appellant’s lands are designated “General Employment”.

[15] The subject lands are zoned “Industrial Zone 3” (M3) under former North York Zoning By-law No. 7625. The Appellant’s lands at 4646 Dufferin Street are zoned “Industrial Commercial Zone” (MC), and are subject to a Holding Zone (MC(H)).

[16] The City’s new harmonized zoning by-law zones the subject lands “Employment Heavy Industrial Zone, Exception 45” (EH1.0(x45)) while the Appellant’s lands at 4646 Dufferin Street are excluded from the harmonized zoning by-law and therefore remain “Industrial Commercial Zone” (MC). It is noted that the harmonized zoning by-law remains under appeal.

[17] Mr. McKay, provided the Board with a detailed planning analysis of the relevant planning documents as these relate to the application. He explained that he did not have any concerns as to Variances 3 and 4 respecting the size and location of the loading space given the evidence before the Board as to the types of vehicles used to

make deliveries at the facility. He explained that the intent of the zoning by-law with respect to loading spaces was to ensure that loading spaces were well screened and that adequate space was provided to ensure that all turning movements occurred on the site and not on a public street. He was of the view that these variances were appropriate if a condition was imposed requiring the provision of adequate landscaping and screening. The Board agrees with his recommendation and is satisfied that these variances meet the four tests set out in s. 45(1) of the Act.

[18] Mr. McKay had concerns with Variances 1 and 2 respecting the reductions to the minimum front and side yard setbacks because these variances will facilitate the enlargement of the building and a greater intensity of use on the property. The reduced setbacks applied for, according to Mr. McKay, will enable the expansion to occur resulting in an overdevelopment of the property. He also relied on the evidence of Nigel M. Taylor, the environmental scientist retained by the Appellant, particularly the applicability of the MOECC D-Series Guidelines to this application. The concern raised is with respect to the construction of a two-storey building abutting the existing one-storey with smoke stacks and how the new building might affect the dispersion of the fumes emanating from these smoke stacks. It is suggested that a study be submitted by the Applicant under the D-6 Guidelines to determine what effects, if any, might be caused by the construction of the two-storey addition.

[19] He explained that the planning permissions on the Appellant's lands contemplate the establishment of sensitive land uses such as a college, commercial school, day nursery, hotel, offices (includes professional offices), park, place of worship, public library and secondary school uses. In fact there are a number of professional medical offices currently in existence at 4646 Dufferin Street according to Mr. McKay. It must be determined whether any adverse effects from the TRC expansion would occur.

[20] He was of the view, as was Mr. Taylor, that the facility on the subject site was a "Class I" facility under these guidelines. A "Class I" facility has a potential area of influence of 70 metres under the Guidelines and it is noted that a portion of the

Appellant's property would be affected by this area of influence. A study under the D-6 Guidelines would determine if the expansion to the Applicant's industrial facility has the potential to change emission dispersion characteristics from the smoke stacks. It is also not clear whether the expansion/addition will facilitate more intensive operations in the facility, which may increase emissions from the facility. This work must be carried out by the Applicant, who controls all of this information. Such a study could also determine whether the prescribed 70 metres area of influence could be reduced depending on the results of the study. The Applicant's intention to make 65 Alness Street available for the parking of vehicles related to the re-development of the subject site is critical to the Board's determination of the appropriateness of these variances.

## **ORDER**

[21] The Board is satisfied based on this evidence that Variances 1 and 2 relating to side and front yard setbacks meet the four tests set out in s. 45(1) of the Act subject to the provision of a study under the D-6 Guidelines. Accordingly, Variances 1 and 2 are hereby authorized subject to the condition that the Applicant obtain an environmental impact study in accordance with Guideline D-6, which demonstrates that the emissions from the smoke stacks on the existing one storey building will not cause adverse effects on the subject property as well as on abutting lands including the Appellant's property. This shall be to the satisfaction of the City of Toronto as part of its site plan control approval process. This condition must be complied with not later than 180 days from the date of this decision, failing which Variances 1 and 2 will be deemed to have been refused. The Applicant will also provide the Appellant with a copy of the study under the D-6 Guidelines.

[22] Furthermore, Variances 3 and 4 are hereby authorized subject to the condition that adequate screening be provided to the satisfaction of the City and in accordance with its Site Plan Control approval process.

[23] This authorization is subject to the same conditions that were imposed by the COA.

[24] Variance 5 respecting the permission to reduce the minimum number of parking spaces required is not authorized.

*"R. G. M. Makuch"*

R. G. M. MAKUCH  
MEMBER

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**Ontario Municipal Board**

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