

ISSUE DATE:

May 16, 2008



Ontario

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

PL071222

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

Applicant and Appellant:	Domenic Cassone
Subject:	Minor Variance
Variance from By-law No.:	1998
Property Address/Description:	300 Richmond Road
Municipality:	City of Ottawa
OMB Case No.:	PL071222
OMB File No.:	PL071222
Municipal No.:	07/A-00447

**APPEARANCES:**

**Parties**

Domenic Cassone

Westboro Community Association

**Counsel\*/Agent**

A.K. Cohen\*

G. Luddington

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

**1. CONTEXT**

Domenic Cassone ("the Applicant") proposes to built a five storey mixed use building at 300 Richmond Road ("the subject property") in the City of Ottawa ("the City") consisting of 20 residential units on the upper four floors, 390 square metres of retail commercial uses on the ground floor and 31 parking spaces on two levels below grade. Presently a nonconforming used car lot is located on the subject property.

The Applicant requested the following variances:

1. To permit an increase in the floor space index ("F.S.I.") to 3.7 (gross floor area of 2,306 square metres);

Whereas the By-law permits a floor space of 2.0 (gross floor area of 1,246.6 square metres).

2. To permit a reduction in the number of required loading spaces to 0;

Whereas the By-law requires 1 loading space.

3. To permit a reduced driveway width of 3.6 metres for the first 9 metres from the street;

Whereas the By-law requires a minimum width of 6.7 metres for the first 9 metres from the street.

On November 29, 2007, the Committee of Adjustment ("the Committee") denied the requested variances. The Applicant is appealing the Committee's decision pursuant to subsection 45(12) of the *Planning Act*.

Lloyd Phillips, a qualified land use planner retained by the Applicant, provided planning evidence in support of the proposal and the proposed variances. Douglas Hardie, a qualified architect retained by the Applicant, provided architectural and urban design evidence in support of the proposal. John Smith, a qualified land use planner and the Program Manager for Development Review, Planning and Infrastructure Approvals at the City was subpoenaed and provided evidence.

Gary Luddington, the director of the Westboro Community Association ("the Association") was present and provided evidence opposing the proposal. In addition, Christine Leadman, the Municipal Councillor for the area was present and gave evidence opposing the proposal. The City did not attend the hearing.

At the beginning of the hearing Mr. Luddington requested that the Association be made a party to the proceeding. Mr. Cohen had no objections to the Association being named a party. The Board finds that the Association has an interest in the appeal and as such granted it the status of party.

## **2. APPLICANT'S EVIDENCE**

It is Mr. Phillips' evidence that the current approved City of Ottawa Official Plan designates the subject property as "Traditional Mainstreet". This designation is intended to allow pedestrian oriented retail and building heights ranging from 4 to 6 storeys, with a minimum height of two storeys. (Section 3.6.3 of the Official Plan).

The current zoning under the former City of Ottawa Zoning By-law 93-98 is "CN2 [507] H (24) F (2.) Commercial Neighbourhood Sub zone 2 Exception 507". This zone permits many commercial retail and service uses including: restaurants, parking lots, places of worship and repair shops. This zone also permits other uses such as dwelling units, artist's studios, medical facilities, offices and retirement homes provided that these and other uses are located above the ground floor and that the ground floor is occupied by one of the main commercial uses, such as retail store or restaurant.

Mr. Phillips informed the Board that the City is finalizing a draft Zoning By-law for the amalgamated City of Ottawa. The most recent draft was released early in March 2008 and proposes to zone this part of Richmond Road as "TM H (24)". Mr. Phillips testified that "TM H (24)" is a Traditional Mainstreet Zone with a maximum building height of 24.0 metres. This zone permits a wide variety of commercial retail and service uses, restaurants, banks and theatres. Residential areas, including apartments and retirement homes are also permitted. The TM Zone also lists Traditional Mainstreets where the part of a lot abutting these streets is "to be treated as though it fronts on that street." Mr. Phillips notes that in the case of the subject property, Richmond Road is designated a Traditional Mainstreet in the Official Plan.

On July 9, 2007, City Council gave approval to the "Richmond Road/Westboro Community Design Plan" ("the Westboro CDP"). Mr. Phillips testified that the Community Design Plans ("CDP") provides guidelines for the day-to-day decision making on land use planning and sets out the communities' priorities for the future.

It is Mr. Phillips evidence that the subject property is located in "Planning Area Sector No. 5", which covers both sides of Richmond Road between Golden Avenue to the west and Athlone Avenue on the east. The land use strategy calls for the retention

and reinforcement of the existing character of storefronts and pedestrian environment in Westboro Village and by encouraging mixed use with continuous ground floor retail/restaurant uses with residential and/or office areas on the upper floors. The maximum proposed building heights should be in the four to six storey ranges with a minimum building height of two storeys. The CDP also provides Building Envelope Guidelines for the various Planning Area Sectors, including Sector No. 5 where the subject property is located. This guideline is intended to maintain the character of the pedestrian oriented streetscape and to recommend building forms, scales, and materials that reinforce the existing character.

Mr. Phillips further testified that the CDP provides visions for the future scale and character of the various areas. In the case of Sector No. 5 Westboro Village, it shows that the Traditional Mainstreet character will be strengthened through redevelopment of some of the more automatic oriented uses to mixed-use buildings. Some larger redevelopment projects, in keeping with the Traditional Mainstreet guidelines will bring residents to live in the Village.

Mr. Phillips informed the Board that the next step for the Westboro CDP is to be put into the form of a draft Secondary Official Plan Amendment and a draft Implementing Zoning By-law Amendment. The City of Ottawa's Planning and Environment Committee has scheduled both of these amendments for a public hearing on April 22, 2008.

It is Mr. Hardie's testimony that the subject building is aligned to the main street property line with a one-metre setback at ground floor level, which is provided with overhead protection. The proposed use at ground floor level is commercial with probable end use being retail sales. The access to these spaces will be directly from the sidewalk. The buildings on the rest of the block are a mixture in terms of size, style, use and scale, which combines to produce a structure that will be compatible with its "Mainstreets" designation.

Mr. Hardie maintains that the architectural design of the project aims to tap into the principles exhibited in the existing buildings in the area and to build upon it. Mr. Hardie testified that the proposed street facade of the proposed building will be broken up into a series of different volumes that step back from the property line to produce the

impression of a series of buildings rather than one monolithic face and thereby adding to the “visual vibrancy of the street”.

Mr. Hardie testified that the preamble to CN Zone (Clause 293(2) (1) (b) and (c)) speaks to the encouragement of visually continuous small-scale street level building forms and the promotion of pedestrian oriented retail. In his opinion the proposal is designed to promote these aims in the context of a mixed-use development that also provides sufficient parking that is totally underground. He maintains that to support these aims the project requires a large enough residential component to ensure viability and as such will require an increase F.S.I.

It is Mr. Hardie’s evidence that the Zoning By-law requires one loading space. The site is surrounded by street or land access on three sides with a service lane at the rear. In his opinion the envisaged retail units will be comfortably served by either front access from Richmond Road and/or from the rear service lane. Mr. Hardie notes that this is in line with the nine existing retail or personal service businesses in the remainder of the block.

It is Mr. Hardie’s testimony that due to the tightness of the site it is practical to provide a 3.6 metre wide ramp access system for the two parking levels. The immediate access is from Eden which is a quiet street with limited two-way access. In addition, the approach to the entry door is effectively widened by its location adjacent to Elvis Lives Lane.

Mr. Hardie filed a shadow impact study (Exhibit 5). He testified that based on the shadow impact study there would be no unacceptable adverse impacts regarding over shadowing on adjacent and surrounding properties as a result of the proposal. Mr. Hardie advised the Board that Richmond Road is an east-west street and therefore will have sunlight for much of the time in any season.

Mr. Phillips testified that the City’s Planning Department had no objections to the proposed variances. He maintains that Hydro Ottawa, the Rideau Valley Conservation Authority and the other City departments had no comments or objections to the proposed minor variances. Mr. Phillips notes that the City of Ottawa Traffic Invitations and Survey Unit did have a concern regarding the location of the loading space.

However, Mr. Phillips testified that the Applicant presented an updated plan to the City and the Traffic Unit withdrew its concerns (Exhibit 1, Tab 9, at p. 55).

It is Mr. Phillips' opinion that the proposed minor variances are consistent with the Provincial Policy Statement (2005) ("PPS"). Mr. Phillips testified that the proposal is consistent with "Section 1.1.3 Settlement Areas" of the PPS,

1.1.3.1 Settlement areas shall be the *force of growth* and their *vitality* and *regeneration shall be promoted*. [*Emphasis the Board's*]

It is Mr. Phillips' evidence that the proposed mixed-use development is to be located on a Traditional Mainstreet in a built-up part of the City and as such will contribute to the overall development strategy for the City by concentrating new development in built-up areas. Mr. Phillips further testified that the proposal will be consistent with section 1.1.3.2. of the PPS, as density and mix of land use will be in used efficiently in a compact urban area.

Mr. Phillips testified that the proposed mixed-use development consist of 20 apartments with ground floor commercial retail uses. He maintains that this will replace an existing used car lot, which is an underutilization of the land and the existing infrastructure and services. It is Mr. Phillips' opinion that the proposed development and its form are intended to support and complement the pedestrian environment on Richmond Road and support the available transit services.

It is Mr. Phillips' evidence that the "Strategic Directions, Managing Growth (Section 2.2)" of the Official Plan estimates that about 90% of the growth in population, jobs and housing will be accommodated within areas designated in the approved urban boundary. This strategy efficiently uses the existing service and land supply and supports a density of development that encourages walking, cycling and transit use rather than auto use. This strategy also helps to conserve non-urban lands such as agricultural areas, mineral reserves and natural environment areas. Mr. Phillips notes that "Section 2.2.3, Managing Growth within the Urban Area" identifies key areas for further growth including: the Central Area, Mixed Use Centres, Employment Areas, enterprise Areas, Developing Communities, Mainstreets and General Urban Area. As previously mentioned the subject property is located in an area designated as a

"Mainstreet". It is his opinion that the proposed development, as enabled by the minor variances, will contribute to the accomplishment of the City's growth strategy.

Mr. Phillips testified that the "Compatibility Section" of the Official Plan (Sections 2.5.1 and 4.11) states that redevelopment must enhance the established community and buildings. In his opinion the proposal would "fit well" in a physical context and would "work well" within the surroundings.

Mr. Phillips maintains that the proposed minor variances would facilitate a mixed-use development that will enhance the Westboro Community and "coexist with the existing development without causing undue adverse impact on surrounding properties." Mr. Phillips testified that the proposal would be compatible with the general intended direction of the Westboro CDP.

Mr. Phillips testified that with only 20 units and 490 square metres of retail commercial, the development would have only a very minor impact on traffic flows.

Mr. Phillips further testified that the access to the underground parking garage will be provided from Eden Avenue. He notes that access from Richmond Road would disrupt the pedestrian environment and access directly from Elvis Lives Lane, on the south side, would cause more traffic onto the lane, which is a narrow service lane. He maintains that the minor variance to the driveway width within the building will not cause an adverse impact on the adjacent street system and the movements in and out of the building will be controlled by light signals to prevent traffic conflict within the building.

Mr. Phillips notes that the development provides two levels of below grade parking totalling 31 spaces. The Zoning By-law requires 28 spaces.

It is Mr. Phillips' evidence that the proposed building will be 15.5 metres in height, which is below the current building height limit of 24.0 metres. The massing of the building has been designed to provide a setback of the main wall of the building on the south side above the garage entry wall. He maintains that the north (Richmond Road) and east (Eden Avenue) sides have articulated architectural treatments to provide a variation in the massing. The upper floors have variable setbacks from the lower floors. The ground floor retail frontage has been set back from the property line to allow for a wider sidewalk on Richmond Road.

Mr. Phillips testified that the requested minor variance to eliminate the loading space is necessary only for the retail space because it is 390 square metres or 40 square metres above the 350 square metres threshold, under which a loading space is not required. In his opinion, the occasional loading that may be required can be done on Elvis Lives Lane. The loading for the residential units will be done through the corner entrance. The service areas are contained within the building and there are no outdoor storage areas.

In Mr. Phillips' opinion the proposed development, as enabled by the requested minor variances, complies with the overall general intent and purpose of the Westboro CDP and the Official Plan.

It is Mr. Phillips' evidence that the current Zoning By-law designates the subject property as a "Neighbourhood Linear Commercial Zone ("LCN) Sub Zone 2, with expectation 507". The height limit is 24 metres and the required F.S.I. is 2.0. The purpose of the LCN zone is to encourage a mix of commercial uses that are pedestrian oriented. It is his evidence that the proposed minor variances meet the intent and purpose of the Zoning By-law. The proposed development maintains the continuous commercial frontage on Richmond Road with residential above. He notes that if the loading space is required it would disrupt this and the width of the internal driving ramp would make the underground parking layout unworkable. Mr. Phillips maintains that this approval allows for ample underground parking and the loading to take place on Elvis Lives Lane, behind the property, which is how many existing businesses in this part of Richmond Road operate. In his opinion the increase in the FSI does not cause the need to vary the yards or building height and the proposed building can fit within the permitted building envelope.

It is Mr. Phillips' evidence that the proposed variances are minor in nature. In his opinion, the requested minor variance for the increase in FSI is minor in nature because the impact is minor. The additional FSI is used for residential purposes, which fulfils the demand for residential apartments in this area and contributes to the overall Official Plan strategy for intensification in the existing built up areas, particularly in Traditional Mainstreets. In his opinion, the proposed development fits within the permitted yard setbacks and building heights.

Mr. Phillips testified that the impact of the variances requested for the elimination of the loading space is very minor and loading can be provided via Elvis Lives Lane. As well, the ground floor commercial component is small in scale and actual loading requirements are minimal. The variance requested for the reduction in the width of the delivery is almost completely confined within the proposed building, except for a small section outside. In his opinion this will make the ramp driveway a one-way ramp and will function adequately within the building without any adverse impacts on surrounding properties.

Mr. Phillips testified that the proposed development is desirable for the appropriate development and use of the subject land. As previously mentioned the proposal will conform very closely to the type of development envisioned by the Traditional Mainstreet polices of the Official Plan and will comply with the applicable design guidelines for developments in Traditional Mainstreets and will comply to the Westboro CDP.

Mr. Phillips testified that the requested variances satisfy the four tests set out in subsection 45(1) of the *Planning Act*. In addition, Mr. Phillips testified that the proposal and proposed variances represents good planning.

Mr. Smith, the City's Program Manager for Development Review Planning and Infrastructure Approval, concurred with the evidence of Mr. Phillips. Mr. Smith testified that the Planning Department has no concerns regarding the proposal from a land use planning perspective. He further testified that the four tests outlined in subsection 45(1) of the *Planning Act* are clearly satisfied.

Mr. Smith testified that what is important regarding redevelopment in an established area is that it fits in and reinforces the existing neighbourhood. In Mr. Smith's opinion the proposal clearly fits in. Mr. Smith maintains that this area is designated Mainstreet and accordingly this is where the intensification should occur. Mr. Smith agrees with Mr. Phillips that the proposal satisfies "Section 4.11 the Compatible Section" of the Official Plan.

Mr. Smith further testified that the proposal fills in a void on Richmond Road and removes the nonconforming used car lot. It is his evidence that the proposal does not have any unacceptable adverse impact to the adjacent and surrounding properties.

Mr. Smith advised the Board that the planning staff did consider the Westboro CDP when reviewing the proposal. In his opinion the proposal is consistent with the principals and objectives of the Westboro CDP. In addition, Mr. Smith testified that the proposal conforms to the general intent and purpose of draft Zoning By-law.

### **3. EVIDENCE OPPOSING THE VARIANCES**

Mr. Luddington testified that the Association supports the removal of the existing non-conforming used car lot on the subject property. He further testified that the Association supports redevelopment in the area. However, he stated that the Association had concerns regarding the lack of a set back from the proposed building to Elvis Lives Lane at the rear of the property. It is Mr. Luddington's view that the intent of the 7.5 metre setback requirement is to keep a reasonable distance between mixed-use buildings and residential building.

Mr. Luddington testified that the Association did not have a great concern regarding the two other variances.

It is Mr. Luddington's evidence that the proposal did not conform to the general intent of the Westboro CDP. He maintains that once the new CDP is fully adopted into the Zoning By-law, it will decrease the maximum building height from 24 to 15 metres and further decrease the FSI from 2.0 to 1.0. However, the Board notes that the proposed building will be 15.5 metres in height, which will be .5 metres greater than the proposed building height limit.

Mr. Luddington testified that the proposal represents an over-development of the site in terms of building mass and fails to provide adequate buffering to minimize adverse impacts on the abutting residential properties.

It is Mr. Luddington's evidence that the Westboro CDP states that any infill development in the area must be well integrated and compatible in scale and character with the existing neighbourhood. In his view the proposal is not compatible.

Mr. Luddington testified that the Westboro CDP states that any new development in the community must "recognize the importance of community involvement and

partnerships in building for a better community". Mr. Luddington directed the Board to a principal stated in the Westboro CDP: "To ensure that a collaborative community building approach is integrated into the CDP that emphasizes shared values, mutual obligations and builds trust and responsibility within the community". In Mr. Luddington's view the community's views were not considered in the development of the proposal.

Christine Leadman, the Municipal Councillor for the area was present at the hearing. She testified that she had concerns regarding the lack of a loading space. She testified that a loading area is important to retailers. In Ms Leadman's view the loading area will abut the residential area and will have an adverse impact on the residential area. In addition, it is her view that Elvis Lives Lane is not a big enough lane for a truck to access.

#### **4. ANALYSIS AND FINDINGS**

The Board has carefully considered the *viva voce* and documentary evidence of all of the witnesses and the submissions made by the parties. The Board finds the testimonies of Mr. Luddington and Ms Leadman to be sincere and frank. However, the Board prefers the uncontradicted expert evidence of Mr. Phillips, Mr. Smith and Mr. Hardie.

The Board notes that the City did not attend the hearing to oppose the requested minor variances. Furthermore, the Planning Department did not oppose the proposal and proposed variances.

It is the evidence of Mr. Luddington that the Association had concerns about lack of a set back for the proposed building. In his view the intent of the 7.5 metre setback requirement was to keep a reasonable distance between buildings.

Mr. Luddington testified that the proposal did not conform to the general intent of the Westboro CDP. He maintains that the proposal is not compatible with the existing buildings; that it is an over-development of the site in terms of building mass. He contends that the proposal does not have an adequate buffering to minimize adverse impact on the abutting residential properties.

Mr. Luddington notes that once the new CDP is fully adopted into the Zoning By-law, it will decrease the maximum building height from 24 to 15 metres and further decrease the FSI from 2.0 to 1.0. However, Mr. Phillips points out that the proposed building is to be 15.5 metres in height, a .5 metre difference. The Board finds that a .5 metre difference from the standard requirement is not a material concern.

Both Mr. Phillips and Mr. Smith went through a detailed analysis on how the proposal conforms to the general intent and purpose of the Westboro CDP and the Official Plan. It is the planners' evidence that the proposal conforms to the City's "Strategic Direction, Managing Growth (Section 2.2 of the Official Plan)". In addition both planners testified that the proposal satisfies the "Compatibility Section" of the Official Plan (Section 4.11). Both planners maintain that the proposal "fits well" in the physical context and that the proposal "works well" with the surroundings.

Both planners testified that with only 20 units and 490 square metres of retail commercial, the development would only have a minor impact on traffic flows.

Both planners testified that the location of the subject property and the height and massing of the proposed building would not cause an undue impact on loss of sunlight and overshadowing. In fact both planners stated that the proposal would not have an unacceptable adverse impact on adjacent and surrounding properties.

Mr. Phillips and Mr. Smith testified that the purpose of the LCN zone is to encourage a mix of commercial uses that will be pedestrian oriented. It is the planners' evidence that the proposed development maintains a continuous commercial frontage on Richmond Road.

Ms Leadman testified that a lack of a loading area would have an adverse impact on the residential area. Both planners disagree with the Councillor. It is Mr. Phillips' evidence that the requested minor variance to eliminate the loading space is necessary only for the retail space because it is 390 square metres or 40 square metres above the 350 square metres threshold, under which a loading space is not required. In his opinion, the occasional loading that may be required can be done on Elvis Lives Lane. The loading for the residential units will be done through the corner entrance. The service areas are contained within the building and there are no outdoor storage areas. Furthermore, Mr. Smith testified that the Planning Department did not have any

concerns regarding the Applicant's plan regarding the loading space. The Board prefers the evidence of Mr. Smith and Mr. Phillips and notes that the City is not concerned about the issues of a loading space.

The Board cannot ignore the uncontradicted expert evidence of two senior planners. Both planners gave lengthy and detailed analysis that was consistent and trustworthy. The Board further notes that the planners' testimonies remained trustworthy and consistent during Mr. Luddington's cross-examination.

The Board finds that all of the four tests of subsection 45(1) of the *Planning Act* have been satisfied regarding the variances. The Board finds that the variances are minor and that the variances conform to the general purpose and intent to the Official Plan and the Zoning By-law and is desirable for the development proposed.

Furthermore, based on the evidence of Mr. Phillips and Mr. Smith, the Board finds that the proposal and the proposed variances are consistent with the PPS.

In addition, based on the evidence of both planners, the Board finds that the proposal and proposed variances represents good planning.

The Board Orders that the appeal is allowed and the variances to By-law 93-98 are authorized.

The Board so Orders.

"M. G. Somers"

M. G. SOMERS  
MEMBER