



THE CORPORATION OF THE CITY OF BRAMPTON

BY-LAW

Number 377-85

An interim control by-law
applicable to MacKay Plaza
(MacKay Street North and
North Park Drive)

WHEREAS, in a resolution enacted at its meeting on 16 December 1985, the council of The Corporation of the City of Brampton has directed that a review and study be undertaken in respect of the land use planning policies applicable to MacKay Plaza;

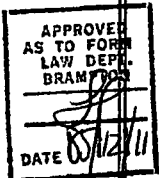
NOW THEREFORE the council of the Corporation of City of Brampton ENACTS as follows:

1. The land described as the parts of Lots 9 and 10, Concession 4, East of Hurontario Street, in the geographic Township of Chinguacousy, designated as Parts 3, 4, 6, 7, 8, 9, 10 and 11 on reference plan 43R-7099, may no longer be used for the following purposes:
 - (a) wine, beer or liquor outlet, or
 - (b) a building, or buildings, with a total building area (as defined in By-law 213-78) exceeding 4787.7 square metres (51534 square feet).
2. This by-law shall be in effect from 16 December 1985 to 15 December 1986.

READ FIRST, SECOND and THIRD TIME, and PASSED, in OPEN COUNCIL,
this 16th day of December, 1985

KENNETH G. WHILLANS - MAYOR

LEONARD J. MIKULICH - CLERK



118(0).1
+
118(0).2



R 860061

Ontario Municipal Board

IN THE MATTER OF Section 37 of The
Planning Act, 1983

AND IN THE MATTER OF an appeal by
Trustcan Realty Limited in respect of
Interim Control By-law 377-85 of the
Corporation of the City of Brampton

B E F O R E :

C.G. CHARRON
Member

- and -

E.F. CROSSLAND
Member

Monday, the 26th day
of May, 1986

THIS APPEAL having come on for public hearing and after the hearing the
Board having reserved its decision until this day;

THE BOARD ORDERS that the appeal in respect of By-law 377-85 is allowed and
the said by-law is hereby repealed.

SECRETARY

ENTERED	
O. B. No.	R86-1
Folio No.	77
JUN 25 1986	
SECRETARY, CNT. MUNICIPAL BOARD	

RECEIVED
CLERK'S DEPT.

MAY 30 1985

REG NO..
FILE NO..



Ontario Municipal Board

V850508
R860061

2874 2
By-law
377-85

IN THE MATTER OF Section 44(12) of The
Planning Act, 1983

AND IN THE MATTER OF appeals by Harry Wilkinson and the Corporation of the City of Brampton from a decision of the Committee of Adjustment of the City of Brampton whereby the Committee granted an amended application numbered A 112/85 by Truscan Realty Limited for a variance from the provisions of By-law 213-78, as amended, premises known municipally as 930 North Park Drive

AND IN THE MATTER OF Section 37 of The
Planning Act, 1983

AND IN THE MATTER OF an appeal by Truscan Realty Limited in respect of Interim Control By-law 377-85 of the Corporation of the City of Brampton

C O U N S I L :

Stephen H. Diamond	- for	Truscan Realty Limited
Laszlo Pandy	- for	Corporation of the City of Brampton

DECISION OF THE BOARD delivered by C.G. CHARRON

Board File V850508 are appeals by Harry Wilkinson and the Corporation of the City of Brampton against the granting of a variance by the City's Committee of Adjustment on the 19th day of November, 1985 to Truscan Realty Limited, the owners of a 5.51-acre, a one level Neighbourhood Shopping Centre, known as MacKay Plaza, located at 930 North Park Drive in the City of Brampton. The variance would allow sufficient expansion to the building area in the plaza to establish a Brewers Retail store.

Board File R860061 is an appeal by Truscan Realty Limited in respect of Interim Control By-law 377-85 passed by the Council of the City of Brampton on the 16th day of December, 1985, to prohibit for one year, the expansion of the existing MacKay Plaza, and the use of any part of the plaza for a wine, beer or liquor outlet.

The two matters were heard together since the lands affected are the same, the evidence heard is common to both and one decision can seriously affect the other.

The variance sought was an increase of 252 square metres or 5 per cent of the building area limitation of Section 3.6 of the Site Specific By-law No. 213-78 enacted by City Council on the 11th day of September, 1978 approved by the Ontario Municipal Board on the 14th day of November, 1978. This added buildable area to MacKay Plaza would allow the construction of a standard size, full range, freestanding Brewers Retail outlet which is a permitted use under By-law 213-78.

The site is designated Neighbourhood Commercial by the City of Brampton Official Plan in the mid-size category being, 4,787.50 square metres (51,534 square feet). These designated sites usually have a supermarket as a principle tenant and primary permitted uses including retail stores, service establishments, catering to personal and household needs and local offices. Automobile service stations and car washes may be permitted. The only objection to By-law 213/78 when it was being considered, was that there not be a pharmacy in MacKay Plaza but rather a liquor store, among other suggested uses (Exhibit 6).

A community centre building is located to the extreme north-west of the site with the retail stores and supermarket along the north and centre of the site. The freestanding Brewers Retail store is proposed to be located some 122 metres (400 feet) to the south-east from the community centre in an area, we are told, that does not now experience much parking demand as being too distant from the entrances to the stores.

The original City of Brampton staff planning report on this application, dated November 6, 1985 (Exhibit 8), showed that public works and building department had no objection and was satisfied that "there will still be sufficient parking spaces". The planning and development department have no objection on the basis that the proposed use is permitted

by the by-law and the variances requested is relatively minor. The staff recommends that a condition be imposed that the design and construction of the proposed building be compatible to the existing plaza building.

Subsequently, and as a result of a City Council decision on November 18, 1985, planning staff filed a revised report omitting its approval of the application and opposing the application on behalf of the City (Exhibit 10).

On the 11th day of December, 1985, the Commissioner of Planning advised City Council as to the various alternatives open to the City in view of the Committee of Adjustment decision in favour of Truscan Realty (Exhibit 11). The most favoured course of action was the enactment of an Interim Control By-law to allow City staff time to evaluate the impact of the subject proposal (Exhibit 12).

City Council passed Interim Control By-law 377-85 on the 16th day of December 1985 and joined the area residents in their appeal to the Board of the Committee of Adjustment decision.

The respondent's planner was of the opinion that the proposed development would have no adverse affect on the surrounding uses and would be completely compatible with the neighbourhood. It was his belief that the proposal was a proper use of the site and good planning.


It is interesting that there was no expert planning evidence given at the hearing on behalf of the appellants. In fact, there was no expert evidence of any kind given at the hearing on behalf of the appellants. The silence of the City's experts, when the City is one of the appellants, begs the question.

The firm of Barton - Aschman Associates Limited, on behalf of Truscan Realty Limited, prepared a detailed traffic and parking report dated March 24, 1986 to assess the impacts, if any, of locating a Brewers Retail store on a portion of the MacKay Plaza site (Exhibit 15). The experts finding was that in comparing the existing and future projected traffic volumes it would

The appeal of Truscan Realty Limited against By-law 377-85 of the Corporation of the City of Brampton is allowed and By-law 377-85 is hereby repealed.

The Board further finds that the relief sought by Truscan Realty Limited for the expansion of the building area of MacKay Plaza by 5 per cent (252 square metres) is a minor variance, is an appropriate use for the land within the general intent and purpose of the by-law and of the Official Plan. The variance is therefore allowed and the appeals of Harry Wilkinson and the Corporation of the City of Brampton from the decision of the Committee of Adjustment for the City of Brampton are hereby dismissed.

DATED at Toronto this 26th day of May 1986.



C.B. CHARRON
MEMBER



E.F. CROSSLAND
MEMBER

appear that the traffic impact on the store at the intersection of MacKay Street and North Park Drive would be so slight as to be indiscernible. The experts do, however, recommend that the driveway to North Park Drive from the plaza be flared at its southern extremity in order to facilitate the separation of exiting traffic. The traffic consultant goes further and adds that even without the Brewers store, this flaring of the driveway should be undertaken.

As to on-site parking, the consultant unequivocally states that the 297 spaces now available are more than sufficient to meet, not only the by-law requirements, but also the existing and future needs generated by the proposed store. The parking is divided into four parking areas, the most convenient of which is directly in front of the row of retail stores and the supermarket. The Brewers retail store, being located in the extreme south-east corner of the site, is away from the existing buildings and entrances and requires a maximum of 20 spaces under the by-law. The small parking lot in the north-east portion of the site is to be redesigned to accommodate 15 more parking spaces (Exhibit 4) to more than accommodate the anticipated parking needs in peak periods, the availability for which is now depicted on photographs (Exhibits 7(a) (1)) to be under-utilized.

The traffic consultants have in this study addressed the problem of on-street parking on private roads and residential streets bordering the plaza that might be due to the influx of new business and caused by the advent of the Brewers retail store. The indepth study is to the effect that there would be no on-street parking required because of the store operation.

The final word is that the small impact upon the street system and the surrounding area would be well within the limits of what is normally considered acceptable.

The objectors concerns are based on a question of use, a Brewers retail outlet. Their traffic and parking concerns have been addressed and the Board is satisfied that they have been totally and efficiently eliminated as a concern.

On the question of use, the use of a liquor, wine or beer store has always been recognized since 1978 as being a proper use within the confines of MacKay Plaza and it would be down-zoning to eliminate this use without proper advance planning and notice.

The City's Public Works and Building Department, the City's Traffic, the City's Police Department, the Planning and Development Department et al. have all had notice of this application since November 5, 1985. The City has had notice of the favourable decision of the Committee of Adjustment since November 19, 1985. At the date of this hearing, April 2, 1986, no traffic or other studies of any kind have been undertaken by anyone on behalf of the City. As stated, the only expert evidence before us is that provided on behalf of the respondents.

It is incumbent upon the City to justify its passing of the Interim Control By-law 377-85 and to show that proper planning issues must be more fully analyzed and that there are issues that have not been addressed. Further, it is essential that for the City to prove that the work has been undertaken as soon as possible concerning the adverse impact of the Interim Control By-law upon the proposed development. At the date of the hearing, as stated, nothing had been done.

There is sufficient evidence before the Board that ample time has lapsed since the decision of the Committee of Adjustment for the City to have undertaken and to even have completed a traffic and parking study, if such is in fact necessary.

Exhibit 11, an inter-office memorandum from the office of the Commissioner of Planning and Development shows that the use of the enactment of an Interim Control By-law is only one of three suggested alternative courses of action which City Council might pursue in view of the Committee of Adjustment decision. There is no planning report included to justify this course of action, only that it is an alternative. There is no evidence of any kind to substantiate or support the need for the by-law.