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Ontario Municipal Board
Commission des affaires municipales de l'Ontario

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

AND IN THE MATTER OF an appeal by Eastern
Properties Ltd. from a decision of the
Committee of Adjustment of the City of
Scarborough whereby the Committee dismissed
an application numbered A 144/88 for
permission to extend an existing legal
non-conforming use, premises known
municipally as 65 Comstock Road

C O U N S E L :

Richard R. Arblaster for Queenswood Auto Enterprises Inc. and
Eastern Properties Ltd.

MEMORANDUM OF ORAL DECISION delivered by J.R. TOMLINSON
on December 14, 1988

Eastern Properties Ltd. and Queenswood Auto Enterprises Inc. are the
owner and tenant respectively of the property at 65 Comstock Road in the
City of Scarborough. That property is used at present for the leasing
rental, sales and service of trucks and automobiles

They wish to construct an addition to the back of the existing
building which would contain additional service bays, a mezzanine storage
area, and certain other related facilities. The addition would comply with
the various setback and other performance standards of the applicable zoning
By-law but because it would be an extension of an existing legal
non-conforming use the owner and tenant sought permission for its
construction from the Committee of Adjustments of the City of Scarborough.
That Committee refused permission and the owner and tenant now appeal to
this Board.

The owner and tenant were represented by counsel who called two
witnesses; Mr. Gaudet, a senior designer with the firm of Design Team Plus
Ltd.; and Mr. Fulford, the president of Queenswood Auto Enterprises Inc. No

one appeared in opposition to the application and no one appeared on behalf of the City of Scarborough.

The evidence showed that the subject property is situated on the south side of Comstock Road between Pharmacy and Warden Avenues in the City of Scarborough. The area is predominantly industrial in nature. On the north side of Comstock Road stretching up to Eglinton Avenue to the north is a property used for a General Motors Van Assembly Plant. The property immediately to the east of the subject property is used for the manufacturing of steel holding tanks, while the property immediately to the west is occupied by a graphics production company. Further to the west on the south side of Comstock Road is a truck leasing company with repair and body work facilities on site, a radiator repair and servicing company, and an autobody shop.

The building now located at 65 Comstock Road was constructed in 1971 and has been used since that time, according to Mr. Fulford, for the sale, rental and leasing of cars and trucks and for repair and autobody work. The present tenant began its operations there in 1978.

Mr. Fulford stated that the addition is necessary because of an increase in the number of vehicles that must be repaired and serviced and because a greater proportion of the vehicles are now larger vehicles which cannot be accommodated in the smaller truck bays that now exist in the present building.

The present building is a one-storey building with a floor area of approximately 8,000 square feet. The proposed addition to the rear would add a further 10,414 square feet. It would essentially increase the existing 6 truck bays by adding 8 larger truck bays as well as a car and a truck painting booth and a car and a truck washing area, the washroom facilities and a mezzanine storage area.

In addition, Mr. Fulford stated that the administration offices at the front of the existing building do not have sufficient storage space and

that at present many of the corporate records and other documents must be stored off site. With the mezzanine storage area in the rear addition all such records and documents could be stored on site. This is a significant factor as the offices at the front of the present building at 65 Comstock Road are the central offices for the country-wide operations of the tenant

The present Official Plan designation applicable to 65 Comstock Road is industrial in two categories. The zoning reflects the difference in Official Plan designations but the only effective difference is that the one portion does not permit outside storage. This is no problem as outside storage is not contemplated. The problem is that the zoning does not allow for the present use of the property because it is categorized as a public garage use not an industrial use

The Board accepts the evidence of Mr. Fulford that the present use of the property began before the enactment of the existing zoning provisions and has continued since then. As well, it accepts his evidence that the boundaries of the property have not changed in that period of time.

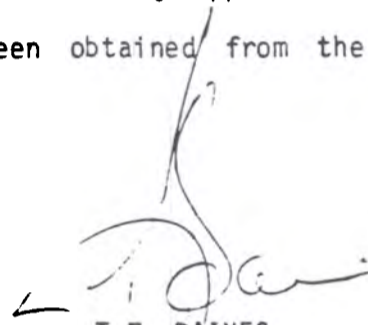
It was the evidence of Mr. Gaudet that the existing use of 65 Comstock is similar to if not the same as a number of other actual uses in the immediate neighbourhood and that because the predominant use is and will be the repair and maintenance of vehicles the use is basically the same in nature as an industrial use which is legally permitted. Mr. Gaudet was of the opinion that the use of the property at present is compatible with the neighbouring uses and will be even more so after the proposed addition is constructed because at least part of the leasing operation will be moved to another premises at that time to accommodate the addition. This will mean that there will be fewer vehicles parked around the building. In addition, the back portion of the property, now gravel, will be paved. The overall appearance of the premises will be neater and more streamlined than it is at present.

Having considered all the evidence the Board is of the opinion that the proposed addition will enhance the use of the property and make it even

compatible with the surrounding uses than it is at present. Therefore, Board will allow the appeal and will grant the application for permission to expand the use as proposed in Exhibits 3, 4 & 5.

Because the Board has some concerns about the possible adverse effects that could result from the proposed car and truck painting booths, the following condition will be attached to the Board's decision.

- (1) The proposed car and truck painting booths will not be constructed or used until all necessary approvals for their construction and use have been obtained from the Ontario Ministry of the Environment.



T.F. BAINES
MEMBER



J.R. TOMLINSON
MEMBER