

ISSUE DATE:

May 12, 2008



PL070970

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

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

Appellant:	Jim & Sandra Crutch
Applicant:	Sheikh & Nadira Usmani
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	3970 Melfort Crescent
Municipality:	City of Mississauga
OMB Case No.:	PL070970
OMB File No.:	PL070970
Municipal File No.:	A-302/07

APPEARANCES:

Parties

City of Mississauga

Jim and Sandra Crutch

Counsel

R. Swayze

DECISION DELIVERED BY K.J. HUSSEY AND ORDER OF THE BOARD

Skeik and Nadira Usmani made an application for variance from the provisions of Zoning By-law 5500 as amended, to permit an existing stairwell to be located in an exterior side-yard. This is to facilitate a direct entrance to a basement apartment. The Committee of Adjustment for the City of Mississauga granted the application. That decision has been appealed by Jim and Sandra Crutch on the grounds that the Committee assumed that the basement unit is a legal use.

The Board heard evidence from land use planner Krystina Collins, who is employed by the City of Mississauga, and from Brian Thomas, a Municipal Law Enforcement Officer who carried out an inspection at the property to determine whether the apartment existed prior to November 1995. Both witnesses testified in support of the

application. The Board also heard evidence from the appellant, Jim Crouch, opposing the application.

On the basis of the evidence provided and on the basis of the uncontradicted planning opinion of Ms. Collins, the Board dismisses the appeal.

Ms Collins provided the Board with a history of the application and the location context and she discussed the planning documents relevant to the application. Ms. Collins concluded that the proposal satisfies the criteria set out under Section 45 of the *Planning Act* for a minor variance to be authorized.

The property is located at the corner of Melfort Crescent and Burnhamthorpe Road West and is zoned "R4" Residential. The property was developed in 1986 and was purchased by the applicants in 2003. Shortly thereafter, an entrance to the basement apartment was constructed. The applicants subsequently sought approval from the Committee of Adjustment to authorize a minor variance to permit the basement entrance to remain as constructed in the exterior side-yard, having a street-line setback of 6.25 metres whereas a minimum of 7.50 metres was required, and a centre line setback to Burmanthorpe Road West of 23.75 metres whereas a minimum of 25.00 metres was required.

The Committee requested clarification on the legality of the basement apartment, and whether there was ever a building permit issued for the apartment or the external basement entrance. In the meantime, on June 20, 2007 Council for the City of Mississauga adopted comprehensive Zoning By-law 0225-2007 and this became the zoning by-law relevant to the Usmani's application for variance. The new By-law provides that stairs, stairwells or retaining walls to facilitate an entrance located below grade at any point or to facilitate a direct entrance to the basement to be located in interior or exterior side-yards, are not permitted. This is now the only variance that is before the Board.

By-law enforcement Officer Brian Thomas determined on inspection, that the apartment existed prior to November 1995. Affidavits to this effect were obtained from the applicant Skeik Usmani and from a neighbour who had knowledge of the residence prior to November 1995. The Basement unit was approved by the Compliance and Licensing Section. Section 76 of the *Planning Act* provides that if prior to November

1995 a dwelling was used or occupied as two residential units it may continue to be used for this purpose. The Committee of Adjustment determined that the legal status of the basement apartment was not in question only the application to recognize the existing basement entrance in an exterior side-yard.

Ms. Collins concluded that the variance is minor and desirable for the intended use. In her opinion the test regarding the intent and purpose of the Official Plan has been met. The entrance is not visible from the street. It respects and maintains the streetscape, which is the intention of the Official Plan.

Similarly, Ms Collins concluded that the purpose and intent of the zoning by-law has been met. The provision of the zoning by-law from which the applicant seeks relief, is to discourage accessory dwelling units. However, this is a legal apartment and that intention is not breached. The By-law also intends that there is sufficient side-yard space so that there is no impact on adjoining properties. Ms. Collins noted that the area in which the basement entrance is located is defined as the exterior side yard although it is at the rear of the house; but for an extension that projects beyond the entrance, it would be considered the rear yard and there would then be no need for a variance. There is also no impact on any other residence because the only abutting property to the rear is a Place of Religious Assembly.

The Appellants, Jim and Sandra Croutch live at 3979 Melfort Crescent, on the opposite side of the street from the subject property. They disagree that the basement apartment has been in existence since 1995 and maintain that the house on the subject property has always been a single family dwelling. The Appellants question the process and the documentation that led to the decision that the apartment has been in existence since 1993. Mr. Croutch testified that he is unable to see the entrance to the apartment but is affected by the development because of the number of cars in the driveway, the noise and the other attendant activities. On cross examination Mr. Croutch admitted that he had never been in the basement of the subject house and therefore has no idea what was there before or after the current owners purchased the property.

The Board finds that the proposal for minor variance meets all four tests under Section 45 of the *Planning Act*. The Board notes that the entrance faces the rear which is not visible from any other residential property and results in no impact on any other

residence. The Board has considered the issues raised by the Appellants with respect to the determination of the status of the apartment and the assertion that the Committee's decision was based on false information. That is not a matter that is before the Board or even within the Board's jurisdiction. But in any event, the Board has no reason to doubt the evidence that was provided by Brian Thomas.

Accordingly, the appeal is dismissed and the variance requested from Zoning By-law 0225-2007 for the City of Mississauga is authorized.

So orders the Board.

"K.J. Hussey"

K.J. HUSSEY
MEMBER