

ISSUE DATE:

April 16, 2008



PL070975

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

Applicant and Appellant:	Ivica & Slavica Mazic
Subject:	Minor Variance
Variance from By-law No.:	Zoning By-law 5500 as amended
Property Address/Description:	1582 Portsmouth Place
Municipality:	City of Mississauga
OMB Case No.:	PL070975
OMB File No.:	PL070975
Municipal No.:	A-369-07

APPEARANCES:

Parties

Ivica Mazic

City of Mississauga

Counsel*/Agent

On his own behalf

Robert J. Swayze*

**DECISION OF THE BOARD DELIVERED BY R. A. BECCAREA AND
ORDER OF THE BOARD**

Background

The Appellant seeks a variance from the provisions of Zoning By-law 5500 and its successor Zoning By-law 0225-2007 to permit an existing wood tile patio to remain on lands zoned G-Section 2490 (Greenbelt) which those zone provisions do not permit. The two patio areas are approximately 6 ft. x 5 ft. and 3 ft. x 3ft. and are covered with 24" square wood tiles. The subject property is municipally known as 1582 Portsmouth Place, in the City of Mississauga.

The City's Committee of Adjustment denied the requested variance on September 27, 2007 on the basis that other than lot line fencing or erosion management measures, no buildings or structures of any kind are permitted in the portion of Mr. Mazic's rear yard of which about 5 metres is zoned Greenbelt.

As part of the City's approval of Mr. Mazic's subdivision around August 2003, City Council acted on the concerns raised by area residents at the time, to zone the rear yards of about 11 lots Greenbelt to preserve the existing trees that were located there. The provisions of Zoning By-law G 2490 that placed those restrictions on those properties was carried forward into the City's current Zoning By-law 0225-2007.

Provisions were also contained in an April 28, 2004 registered Development Agreement that provided that purchasers are to be advised that the existing trees on those lots, including Mr. Mazic's, are to be preserved and maintained by the owners.

Evidence

The Board heard from the City's planner, Renata Samecki and its arborist, Aaron Schmidt. Ms Samecki, who was well prepared, provided her detailed opinion that the requested variance failed all four tests contained in Section 45 (1) of the *Planning Act*. She expressed concern that the protected trees might be threatened and advised that she believed the patio could easily be relocated in the remaining rear yard of Mr. Mazic's property and not take up as it does the entire zoned Greenbelt area of his rear yard.

Mr. Mazic did not provide any contradictory expert planning evidence.

Mr. Schmidt advised that the retaining walls Mr. Mazic built and the wood tiles located next to them, were evidence of significant compaction of the roots of the existing trees that are about 35 years old. He anticipated that if the construction was not removed, signs of tree damage to the existing 11 or 12 trees would start to appear within 2 to 4 years.

Mr. Mazic advised that he was aware of the provisions of the Development Agreement, but did not appreciate from the documents he received when he bought the subject property, that a portion of his rear yard was zoned Greenbelt.

The Board will give Mr. Mazic the benefit of the doubt. It is clear from the photographs he provided that he genuinely wanted to beautify his rear yard with an attractive patio and elevated planting beds next to the protected trees.

The Board, however, accepts Mr. Schmidt's uncontradicted evidence that the limestone material under the patio wood tiles and the raised soil around the protected trees are detrimental to the continued health and ought to be removed.

Findings and Order

The Board finds, based on the uncontradicted evidence of Ms Sanecki and Mr. Schmidt, that the requested variance does not constitute good land use planning.

The Board Orders that the appeal is dismissed. The requested variance is not authorized.

The Board so Orders.

"R. A. Beccarea"

R. A. BECCAREA
MEMBER