

ISSUE DATE:

**Feb. 25, 2008**



PL071139

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: 2069538 Ontario Limited  
Subject: Minor Variance  
Variance from By-law No.: 0225-2007  
Property Address/Description: 7212 Airport Rd  
Municipality: City of Mississauga  
OMB Case No.: PL071139  
OMB File No.: PL071139  
Municipal No. A-387/07

**APPEARANCES:**

**Parties**

2069538 Ontario Limited

**Agent**

Zaheer Beg

**DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD**

The Applicant seeks relief from City of Mississauga Zoning By-law 0225-2007 to permit a take-out restaurant in a strip mall on Airport Road to be located closer than 60.00 metres (196.85 feet) to a residential zone (approximately 17 metres), whereas the By-law requires a take-out restaurant to be located a minimum of 60.00 metres to a residential zone in this instance. The City did not appear in opposition. A document book was entered into evidence and agent Zaheer Beg, an architect and experienced development consultant, represented the Applicant.

The Applicant has built a new strip mall on Airport Road with nine units. The plaza will eventually be registered as a business condominium with individual tenants owning their business premises within the plaza. To the immediate west of the plaza is a residential area zoned as R4 in the Zoning By-law. The first home abutting the plaza parking lot has the municipal address of 5 Beverley Street and belongs to Surjit Prewal who appeared as an interested participant. The Applicant has ownership of the two homes on the other side of Mr. Prewal's home (Nos. 7 and 9). To the north and east of the Prewal home is the Applicant's large parking lot and commercial buildings.

Mr. Beg advised the Board that when the strip mall was built, the site plan included details of a pizza take-out restaurant. The City issued a permit for this business to operate in the plaza. Today, the Applicant seeks to open a vegetarian Indian take-out restaurant beside the pizza business in the plaza but the Committee of Adjustment denied the request.

The reasons for the refusal relate to an interesting amendment to Zoning By-law 5500 that took place in 2002 and which the Ontario Municipal Board approved in 2003. The original by-law required the 60-metre setback of a take-out restaurant from a residential area in the entire area covered by the by-law. When Zoning By-law Amendment No. 0470-2002 came into effect, the 60-metre setback requirement was removed and the special zoning for this area enabled the Applicant to obtain a permit to open a pizza restaurant in the strip mall.

However, a further by-law amendment came into force in June 2007 and restored the 60-metre requirement. Mr. Beg told the Board that while the Applicant applauded the introduction of this additional by-law amendment because it opened up the possibility of more business uses in this area along Airport Road and it is not restrictive, unfortunately the amendment served as a blanket amendment that did not pick each individual development in the area and created problems. Mr. Beg noted that some 50 cases like the Applicant's case have gone before the Board. In this case, the new amendment picked up the wording of the original by-law and reinserted the 60-metre setback requirement. Mr. Beg noted that there are many restaurants in the area and many of these back directly onto residential areas. In this case, the plaza has been designed sensitively to the nearby residential area by placing the plaza building along the front street in accordance with the City's desire for main street business frontage and the parking area placed in the rear.

Mr. Prewal expressed concerns with the location of the plaza's parking lot in that the general contractor who did the landscaping along the Applicant's perimeter line of the property with Mr. Prewal's residence graded the slope toward Mr. Prewal's home instead of back toward the parking lot. Further, it has caused water seepage into his basement and the driveway has been adversely affected. The City determined it would withhold the condominium registration of the strip mall until the Applicant has corrected the landscaping/drainage problems. In this regard, the Board was presented with

documentation in Exhibit 1 verifying that the Applicant has taken steps to respond to this concern by holding the first contractor accountable for the deficient work; by hiring a professional engineering consultant to undertake remediation plans for the landscape strip and a detailed site and grade plan was entered into evidence.

Mr. Prewal expressed concerns with the noise of trucks loading and idling in the surrounding parking lot and the possibility of smells emanating from the new restaurant. The Board notes, however, that trucks have been coming to this commercial property in the absence of an Indian take-out restaurant and Mr. Prewal is entirely within his right to contact municipal by-law enforcement officials or the police to complain about idling trucks during late-night hours. In respect of food smells, the owner of the proposed restaurant testified before the Committee of Adjustment that as a vegetarian restaurant, there will be no food smells since he does not prepare or cook meat.

What is most interesting, however, is that Mr. Prewal advised the Board that the Applicant has entered into a signed agreement with Mr. Prewal to purchase his property as the Applicant wishes to eventually raze the properties at 5, 7 and 9 Beverley Street behind the Applicant's buildings and expand his business interests thereon. Mr. Prewal also told the Board he would withdraw his expressed concerns if he could have some indication from the Applicant that he intends to in fact honour the signed agreement to purchase his property. If he will, Mr. Prewal said he did not want to waste the Board's time and he would withdraw his concerns. In this regard, the Board cannot afford any weight to Mr. Prewal's concerns as these relate to the overall plaza itself and not just to the proposed take-out restaurant; the Applicant has presented evidence that serious efforts have and are being taken to address the landscaping drainage; there will be no adverse impact from the vegetarian take-out business; and the interested participant has stated he would not even be at this hearing if the Applicant had followed through on the purchase agreement for his residence.

Accordingly, the Board turned to the more professional evidence provided by the Applicant's architectural consultant who has had similar commercial strip mall experience as well as restaurant construction. Mr. Beg reviewed the four tests for a minor variance as outlined in Section 45(1) of the *Planning Act* and opined that all four tests are met. He spent extra time explaining the evolution of the zoning by-law amendments and he noted further that the R4 zoning designation for the strip mall was

removed several years ago replaced with a D (Development) designation for commercial building. These (D) and (DC) designations are occurring all along Airport Road in recognition of the development and growth in this area. The Board accepted Mr. Beg's evidence that by-law amendment 0225-2007 failed to capture many of the various individual standards and characteristics of a number of commercial properties caught up in the latest amendment. Nevertheless, the Board accepts that in applying the four tests of a minor variance, the proposal for an Indian vegetarian take-out restaurant meets the tests as set out.

Having considered all of the evidence, the Board determines that the proposal satisfies the four tests of Section 45(1) of the *Planning Act*. The Board allows the appeal and authorizes the minor variances.

So Orders the Board.

"R. Rossi"

R. ROSSI  
MEMBER