

ISSUE DATE:

**APRIL 4, 2008**



PL071144

**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: Soheir Attalla  
Subject: Minor Variance  
Variance from By-law No.: 0225-2007  
Property Address/Description: 5269 River Forest Crt  
Municipality: City of Mississauga  
OMB Case No.: PL071144  
OMB File No.: PL071144  
Municipal No.: A-392/07

**APPEARANCES:**

**Parties**

Soheir Attalla

**Counsel**

S. Fanous

**DECISION DELIVERED BY M.G. SOMERS AND ORDER OF THE BOARD**

Soheir Attalla ("the Applicant") is appealing a decision of the Committee of Adjustment ("the Committee") regarding her application for minor variance. The Applicant requested the Committee to authorize a minor variance to By-law 0225-2007 ("the By-law") to permit the existing basement entrance stairwell to remain in the interior side yard located at 5269 River Forest Court in the City of Mississauga ("the subject property"). The By-law states 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, shall not be permitted in the interior side yards or exterior side yards.

On October 25, 2007, the Committee denied the Applicant's request for minor variance. The Applicant appealed the Committee's decision to the Board pursuant to Section 45(12) of the *Planning Act*.

The Applicant, her husband and son were present at the hearing. Sam Fanous, a family friend, advised the Board that the Applicant requested that he act as her agent. The Applicant and her son, George Attalla, provided evidence.

Also present at the hearing was Keith Chin, the adjacent property owner at 5273 River Forest Court. Mr. Chin resides at the adjacent property with his wife, father and mother. Mr. Chin advised the Board that he and his parents opposed the basement entrance. He advised the Board that he was at the hearing in his own capacity and as agent for his parents. The Board granted Mr. Chin participant status.

The City did not attend the hearing.

It was the Applicant's evidence that she and her husband purchased the house in December 2006. The house was a four-bedroom house with a finished basement. The finished basement was ideal for the activities of her four children and their friends. However, in a short period of time, the Applicant realized that a side entrance would be required, so that her children and their friends would be able to directly access the basement, without disrupting the rest of the household and interfering with the family's privacy.

The Applicant testified that as a first time buyer she was not aware of the By-law that prevented such basement entrances and the need for a building permit. She retained a small construction company to erect the stairwell and door. The construction company did not inform her of the By-law and/or the need for a building permit.

It was the Applicant's evidence that prior to retaining the builders and building the stairwell and door she had asked her neighbours; including Keith Chin, if they objected to its construction. The Applicant testified that Mr. Chin informed her that he had no concerns or objections with the construction of the stairwell and the door.

It was the Applicant's testimony that other houses in the immediate area had side doors to the basement.

On July 26, 2007, the Applicant received an "Order to Comply" from the City, informing her that she had violated the City's By-law and that she would have to apply for a Work Permit.

The Applicant testified that the Committee, in their decision, claimed that the stairwell may hinder access to the rear yard in case of emergency. However, the Applicant maintains that the distance between the stairwell and the property line is approximately 1.2 metres. The Applicant testified that she contacted the Mississauga Fire Department and was told that the distance mentioned above was more than adequate for the Department to access her rear yard in case of emergency.

The Applicant advised the Board that she has no intention of renting the basement. She testified that the basement would have no kitchen, which was a clear indicator that she was not going to rent the basement. The Applicant advised the Board that she had signed an affidavit acknowledging that she had no intention of renting the basement, under any circumstance, now or in the future.

It was the Applicant's testimony that she had received written support for the separate entrance to the basement from her two adjacent neighbours at 5273 and 5280 River Forest Court. The Applicant filed the letters with the Board (Exhibit 2 (a) (b)).

George Attalla, the Applicant's son, concurred with the evidence of the Applicant. It was his view that the requested variance maintained the intent of the By-law. He maintained that the intent of the By-law as he saw it was for the family to fully enjoy the use of their home. He testified that the side door was to be used by his brothers, sister and friends to go to the basement, so as not to enter the main living area of the house. It was his view that the side door entrance would have little or no impact on the neighbourhood, including Mr. Chin's property. It was also his view that stairwells and door were desirable for use of the house by his family.

Mr. Chin testified that he, his wife and father and mother were opposed to the construction of the stairwell and door. It was Mr. Chin's evidence that the construction of basement entrance would affect the safety of the building structure and the surrounding buildings. The panel asked Mr. Chin to explain how it would affect the safety of the

building structure on the subject property and the nearby buildings. Mr. Chin replied it would affect the texture of the soil near his and the Applicant's home. The Board did not find Mr. Chin's explanation persuasive.

It was Mr. Chin's evidence that the basement entrance would allow the basement to be turned into a rental apartment. He maintained that a tenant would create problems, such as on-street parking and noise. He further maintained that these problems would create an inconvenience to the neighbourhood and tend to lower property value on the street. Mr. Chin testified that the basement entrance would result in a congested street and "degraded living conditions". As previously mentioned, the Applicant testified that she had no intention of turning the basement into a rental unit. The Board finds the Applicant's testimony to be credible and trustworthy regarding her intention of not renting the basement.

It was Mr. Chin's evidence that it would be unfair to the rest of the neighbourhood, if the Applicant was allowed to keep the basement entrance.

As previously mentioned, Mr. Chin signed a letter dated September 4, 2007, supporting the Applicant building a separate entrance to her basement. Mr. Chin was asked by Mr. Fanous, if the signature on the supporting letter was his, to which he said yes. Mr. Chin was further asked by Mr. Fanous, if he understood the content of the letter when he signed it, to which he said yes. Mr. Chin was asked by Mr. Fanous and the panel on more than one occasion what changed his position from the time he signed the letter to the hearing today. Mr. Chin responded that his father opposed the basement entrance. However; it is the Board's understanding, that Mr. Chin's father opposed the basement entrance from the very beginning. The Board does not find Mr. Chin's explanation regarding his change of support of the basement entrance to be persuasive.

The Board has carefully considered all of the evidence presented at the hearing. The Board finds that Mr. Chin's evidence is not persuasive. The Board prefers the evidence of the Applicant and George Attalla.

It was the Applicant's evidence, that the distance between the stairwell and the property line is approximately 1.2 metres and that the Mississauga Fire Department

found the Applicant's access to her rear yard to be acceptable in case of emergency. She further maintained that the minor variance was to make her family's living space more convenient and useable. Based on this limited planning evidence the Board finds that minor variance conforms to the general intent and purpose of the Official Plan and the Zoning By-law.

Based on the evidence of the Applicant and George Attalla, that the purpose of the minor variance was to provide their family with a more convenient living space, the Board finds that the minor variance is desirable for the appropriate development and use of the land.

Based on the evidence of the Applicant and George Attalla the Board finds that the variance will have minimal adverse impact to adjoining properties and the immediate neighbourhood, the Board finds the variance to be minor.

The Board notes that the City did not attend the hearing to oppose the Applicant's appeal.

Having carefully considered all of the evidence, the Board finds the minor variance meets the four tests outlined in Section 45(1) of the *Planning Act*.

THE BOARD ORDERS that the appeal is allowed and the variance to By-law 0225-2007 is authorized.

The Board so Orders.

"M.G. SOMERS"

M.G. SOMERS  
MEMBER