

ISSUE DATE:

JUL. 31, 2008



PL071146

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

Applicant and Appellant: Ronald Starr
Subject: Minor Variance
Variance from By-law No.: 0225-2007
Property Address/Description: 3945 Doug Leavens Blvd
Municipality: City of Mississauga
OMB Case No.: PL071146
OMB File No.: PL071146
Municipal No.: A-390/07

APPEARANCES:

Parties

Ronald E. Starr

Agent

M. Starr

DECISION DELIVERED BY D. BARBIR AND ORDER OF THE BOARD

The matter before the Board is an appeal by Ronald E. Starr (“the Applicant”) from a decision of the Committee of Adjustment that dismissed his application for a variance to By-law 0225-2007. The proposal would permit the establishment of Pizza Pizza restaurant within the subject commercial plaza that is less than 60.0 metres from a residential zone, instead of the required 60.0 metres.

Ms Starr represented the Applicant and gave evidence in support. Several individuals introduced themselves as business associates of Ms Starr’s company but did not participate in the hearing.

Ms Starr stated that a number of meetings were held between the Applicant, neighbours, and the City. Complaints brought forward by the neighbours and the City were successfully addressed by the Applicant.

Ms Starr stated that the subject site is zoned and designated commercial. The new bylaw should have had the same exemption. The City had realized that an error was made and is in the process of correction. The variance requested is consistent with the policies of the applicable Official Plan and requirements of the zoning bylaw. The subject's plaza already exists, the neighbours have no objections to the proposal. The variance requested is appropriate for the development or use of the land, and is minor in nature.

Ms Starr reviewed the four tests under subsection 45(1) of the *Planning Act* and concluded that all four tests are met. The Board agrees.

The original zoning under old By-Law 5500 Section 1936 exempted the subject property from the provisions of section 59A allowing a restaurant to operate within the 60-metre setback. It is only the new By-Law 0225-2007 that requires a variance.

Based on the evidence presented and the exhibit submitted, the Board finds that the application does meet the tests required under section 45(1) of the *Planning Act*.

The Board finds that no evidence was presented in opposition to the proposal.

Based on the foregoing, the appeal is allowed and the variance requested is authorized.

Aside, part of the hearing was taped without the Board's permission by Ms. Starr's associate. The Board orders the tape seized. Ms. Starr is responsible for the execution of this order.

The Board so Orders.

"D. Barbir"

D. BARBIR
MEMBER