

ISSUE DATE:

October 20, 2008



PL080559

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: Gurdeep Baweja
Subject: Minor Variance
Variance from By-law No.: 0225-2007
Property Address/Description: 1520 Estes Crescent
Municipality: City of Mississauga
OMB Case No.: PL080559
OMB File No.: PL080559
Municipal No. A-125/08

APPEARANCES:

Parties

Gurdeep Baweja

City of Mississauga

Counsel*/Agent

Major Singh

A. Wilson- Peebles*

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

This is an appeal by Gurdeep Baweja ("Applicant") from the Committee of Adjustment's refusal of his application for minor variance with respect to property located at 1520 Estes Crescent in the City of Mississauga. The Applicant sought approval for variance from Zoning By-law 225-2007, to facilitate a basement entrance stairwell within the easterly side yard of his property. Zoning By-law 225-2007 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 shall not be permitted in the interior or exterior side yard.

Background:

The subject property was purchased in November 2006. Soon thereafter, the Applicant began construction on the basement entrance stairwell. On November 15,

2006, the Applicant received an order to comply with the Building Code and obtain a building permit for the construction. On February 7, 2007, the Applicant submitted an application for a building permit. On March 7, 2007, the building department issued an Application Status Report (ASR) with details of outstanding deficiencies to be rectified before a building permit could be approved. The report also contained the following information:

Please be advised that the City of Mississauga is proposing to adopt the new City-wide Zoning By-law in the spring of 2007. The current Zoning By-law regulations on the use of land may be changed, affecting the approval of Building Permits, Zoning Certificates or other development application submitted to the City prior to approval of the new Zoning By-law. The City advises that all applicants should review the proposed new City-wide Zoning By-law carefully and to consult with a professional advisor with regard to the proposed changes and how they may impact on development applications.

Information of the new City-wide Zoning By-law is available at the Planning and Building Department counters on the 9th, 10th and 11th floor and on the City of Mississauga web site...

Between March 7 and June 20, 2007, several meetings ensued between the Applicant's father, Kulgit Baweja and the City's planning staff. During that time there was other correspondence from the City to the Applicant, directed at rectifying deficiencies, to complete the application for building permit. Notice regarding the impending Zoning By-law was repeated in each update on the status of the application. There was never any discussion in any of the meetings that Mr. Baweja had with City staff, on the subject of the new by-law.

On July 4, 2007, the department advised Mr. Baweja that his application was contrary to Zoning By-law 225-2007, which came into effect on June 20, 2007. The City advised that a variance would be required for construction of the basement entrance stairwell.

Mr. Baweja filed an application for minor variance on February 2008.

Applicant's Evidence and Argument:

The Applicant argued that the proposal ought to be allowed because the requirements under the *Planning Act* for a variance to be approved have been met.

The Applicant's father, Kulgit Baweja, testified that the property was purchased to accommodate the extended family, including his wife, his son and daughter-in-law. They required a large home and selected that property because of the finished basement. Mr. Kulgit Baweja is a real estate agent who operates from home and has his office in the basement.

He testified that he was unaware of the requirement for a building permit to construct the stairwell. Construction started before the family moved in. As soon as he was notified of the contravention, he diligently set about doing what was necessary to obtain a permit. Mr. Baweja testified that he was under the impression that the application would have been assessed against By-law 5500 because it was submitted while that by-law was still in effect. A basement entrance stairwell within a side yard was permitted under By-law 5500.

He was unaware of the impending By-law 225-2007 and expected that he would have been informed by the City's staff with whom he had many meetings on this matter. He testified that City staff was aware of his intentions and the expense that would have been incurred in trying to satisfy the requirements for the building permit.

The Applicant's agent Major Singh also testified in support of the Application. Mr. Singh is a designer with credentials in Architecture, Building Engineering and Management.

He offered the following opinion on how the proposal satisfies the tests for a minor variance under the *Planning Act*:

1. The intent of the Official Plan and Zoning by-law would be met

The proposal conforms to the Official Plan on residential use and the low-density residential character of the area is maintained.

With respect to the zoning by-law, the intended use is for an office and to accommodate large family gatherings. The intent of the zoning by-law is to prevent an accessory basement dwelling unit and that intent is maintained because the basement is entirely unsuitable for a separate dwelling. The space is directly open to the first floor

of the house. There are no doors or other barriers for privacy, and there is no fire separation, which is a costly undertaking.

The other purpose of the bylaw is to ensure that side yards remain unencumbered. That intent would be met because the proposed basement entrance is aligned with the existing garage and is not visible from neighbouring property or Street. The existing character of the residential neighbourhood would therefore be maintained.

2. Desirable for appropriate development of the land

The Applicant's intent is to use the basement for large and frequent family gatherings and this entrance would make the easy and safe ingress and egress to the backyard. The easterly side presents the only opportunity to locate this entrance because of the existing configuration of the finished basement.

Minor

This development would have no impact on any neighbouring property.

The City's Evidence and Argument:

The City presented evidence from Dennis Murphy, Zoning Examiner for the City, assigned to this application, and from Renata Sanecki, a Planner with the City.

Mr. Murphy gave the Board a detailed account of the procedure that was followed in processing the application for building permit. He confirmed that deficiencies in the application delayed the building permit. During the period of delay the City provided written application status reports that informed the Applicant of the impending changes to the zoning by-law and warned that development applications could be affected by the changes. At no time did the Applicant make any enquires about the changes and the potential effect on his application.

Ms. Sanecki testified that a building permit was not issued for the subject property before June 20, 2007, when the By-law came into force. The application is therefore subject to Zoning By-law 225-2007.

Ms. Sanecki stated that the purpose in prohibiting side yard entrances to the basement is to discourage development of accessory dwelling units and to ensure that side yards remain unencumbered. Ms. Sanecki stated that basement apartments were also illegal under the previous zoning by-law, but were not effectively prevented. This new by-law aims to reverse that by eliminating direct entrance to the basement in interior or exterior side yard, although external entrances from rear-yards are permitted.

Ms. Sanecki noted that although the current owner does not intend to have an accessory dwelling unit, the existence of an entrance could encourage future non-compliance.

The Board's Findings:

The Board finds that the City repeatedly gave the Applicant information that the new zoning by-law was imminent. The Applicant failed to make any enquiries, as advised by the City, about the effect that the proposed by-law could have on his building permit application. Failure to do so cost the Applicant unnecessary expenses. Failure to perfect the application before it was submitted also caused delay and unfortunately, the result was that Applicant missed the opportunity to proceed under the old rules.

The Board finds that a variance to establish a use specifically prohibited by the zoning by-law is not minor. (*Sgro v. Toronto (City) Committee of Adjustment [1999] OMBD No. 1352, Vaughan v. Barrie (City) [2007] OMBD No. 690*).

The Board accepts Ms. Sanecki's planning opinion that this newly minted provision, to eliminate direct entrances to basements in the interior or exterior side yards, is to discourage a widespread practice throughout the City, of developing illegal basement apartments. To establish the prohibited use by way of a minor variance would frustrate the intent and purpose of the zoning by-law.

Accordingly, the Board finds that pursuant to subsection 45(1) of the *Planning Act*, the variances requested are not minor, and that the general intent and purpose of the By-law are not maintained.

The Board Orders that the Appeal be dismissed.

“K.J. Hussey”

K. J. HUSSEY
MEMBER