

Issue Date:
DEC. 18, 2008



PL081038

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: Nasreen Akhtar
Subject: Minor Variance
Variance from By-law No.: 0225-2007
Property Address/Description: 5853 Evenstarr Court
Municipality: City of Mississauga
OMB Case No.: PL081038
OMB File No.: PL081038
Municipal No. A236/08

APPEARANCES:

Parties

Nasreen Akhtar

Agent

M. Mushtaq

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. G. SOMERS
ON NOVEMBER 25, 2008 AND ORDER OF THE BOARD**

Nasreen Akhtar ("the Applicant") lives at 5853 Evenstarr Court ("the Subject Property") in the City of Mississauga ("the City"). The Applicant (also the Appellant) is requesting the Board authorize one variance:

1. The construction of a basement entrance stairwell in the interior side yard of the existing dwelling;
Whereas By-law 0225-2007, as amended, does not permit stairs, stairwells or retaining walls, to facilitate an entrance located below grade at any point, or facilitate a direct entrance to the basement interior side yards in this instance.

The variance set out below was withdrawn at the commencement of the hearing:

2. A bridal consultation business within the subject dwelling, occupying approximately 81.19 square metres of the basement floor area;
Whereas By-law 0225-2007, as amended, permits a maximum of 25% of the gross area – residential of the detached dwelling to a maximum of 50.00 square metres to be utilized for a home occupation.

On July 3, 2008, the Committee of Adjustment (“the Committee”) denied the request to authorize the minor variances. The Applicant appealed the Committee’s decision pursuant to subsection 45(12) of the *Planning Act*.

M. Mushtaq, the Applicant’s husband, was present at the hearing. Mr. Mushtaq advised the Board that his wife was not feeling well and could not attend and that he would be acting as her representative.

Mr. Mushtaq informed the Board that the Applicant was withdrawing the second variance. He advised the Board that his daughter moved the bridal business to 31 Thomas Street, which is zoned to permit such an activity. Mr. Mushtaq filed an Application for Certificate of Occupancy with the Board as proof of the move and the occupancy of the bridal business at 31 Thomas Street (Exhibit 1). The Board finds Mr. Mushtaq’s testimony credible and trustworthy regarding the removal of the bridal business from the Subject Property. As such, the Board accepts Mr. Mushtaq’s evidence that the bridal consultation business is no longer located at the Subject Property and acknowledges the withdrawal of Variance #2 from appeal.

Mr. Mushtaq testified that the Subject Property is designated “Residential Low Density II” in the East Credit District. This designation allows detached, semi-detached and street townhouse dwellings with a density range of 18-30 units per net residential hectare. He testified that the subject dwelling is single detached and is compatible and fits well into the existing stable Neighbourhood.

Mr. Mushtaq further testified that the City was concerned that the driveway had been widened to the entire width of the subject dwelling and that it had four striped parking spaces. Mr. Mushtaq directed the Board to the Committee’s decision of July 3, 2008, in which it was stated, that the amount of hard surface paving in the front yard, in conjunction with the striped spaces, had “considerably altered the residential appearance of the dwelling.” Mr. Mushtaq notes that the Committee held that the hard surface paving in conjunction with the striped spaces were not in keeping with the pertinent Official Plan policies, or the Zoning By-law regulations, and was not desirable.

Mr. Mushtaq testified that he understood the City’s concerns and has tried to address them so that the Subject Property (with the remaining variance) conformed to the general intent and purpose of the Official Plan and the Zoning By-law.

Mr. Mushtaq filed a letter dated April 16, 2008, with the Board from the City's Transportation and Works Department (Exhibit 2). In this letter the Municipal Law Enforcement Officer stated that the continuous hard surfaced driveway exceeded the maximum permitted width of 8.5 metres on a single-family detached dwelling. The Enforcement Officer requested that the Applicant limit the driveway or hard surfaced parking area width to 8.5 metres and cease parking any vehicle on the extended portion of the driveway. The Enforcement Officer asked that a permanent grade separation barrier of 0.1 metres in height be installed on the driveway separating the abutting walkway.

Mr. Mushtaq testified that in October 2008, he had constructed a 0.1 metre barrier separating the driveway from the abutting walkway, as per the City's instructions. In addition, Mr. Mushtaq testified that in October 2008, he painted over the stripped lanes on the driveway with black paint, and that the stripes are no longer visible.

It was Mr. Mushtaq's evidence that there were a number of houses on the street and in the Neighbourhood that had driveways that were the same width as that of the Applicant's.

In Mr. Mushtaq's view, the Subject Property (with the remaining variance) is the type of dwelling that is compatible with the nearby residential properties and respects and reinforces the prevailing pattern of the streetscape and character of the Neighbourhood. In Mr. Mushtaq's view, the remaining variance conforms to the general intent and purpose of the Official Plan.

Mr. Mushtaq testified that the Subject Property is zoned "R4-20 Residential". He notes that Section 4.1.5.8 of the By-law prohibits stairs, stairwells or retaining walls that facilitate an entrance located below grade at any point, or a direct entrance to the basement, in the interior or exterior side yard. It was his evidence that the basement entrance existed when the Applicant purchased the Subject Property in 2002 (Exhibit 3).

Mr. Mushtaq testified that in his view, the principle purpose behind banning such entrances was to ensure that side yards would remain unencumbered. Mr. Mushtaq directed the Board to the Committee's decision that stated: "While it appears that the existing stairwell does not inhibit the function of the required side yard, the presence of an entrance located below grade or a direct entrance to the basement, could promote

the development of an accessory dwelling unit; whereas in this instance, a maximum of one dwelling unit is permitted on a lot (as per Section 4.1.1.1 of the By-law).” Mr. Mushtaq stated that the Committee held that the existing stairwell did not inhibit the function of the required side yard.

Mr. Mushtaq argued that the Committee in this particular instance was not concerned with the existing stairwell inhibiting the side yard, but with the possibility of using the entrance for an illegal rental premise in the basement. He maintained that at no time has the Applicant ever rented the basement and furthermore, that the Applicant had no intention to do so. Mr. Mushtaq testified that he lived at the Subject Property with the Applicant and their five children, three of whom are married. He believes that the previous owner of the Subject Property may have rented the basement, but he is not sure.

Mr. Mushtaq testified that the Compliance and Licensing Enforcement Section of the City had inspected the Subject Property in February 2008. Mr. Mushtaq filed a letter from the Municipal Law Enforcement Office confirming that the property did not contain an accessory dwelling unit at that time (Exhibit 3). Mr. Mushtaq maintained that the Compliance and Licensing Enforcement Section has inspected his premises at least five times in the past and has not found an accessory dwelling unit. The Board finds Mr. Mushtaq’s testimony credible and trustworthy regarding the Applicant’s intention of not renting the basement. As such, the Board accepts Mr. Mushtaq’s evidence that the Applicant has not rented the basement in the past and that she has no intention to do so in the future.

Mr. Mushtaq testified that the Committee in March of 2006 granted a neighbour at 5845 Evenstarr Court a basement entrance similar to that of the Applicant (Exhibit 3). Mr. Mushtaq argued that it is not fair that one resident is granted a basement entrance and another is not.

Mr. Mushtaq maintained that the City was concerned with the following non-conformities to the Zoning By-law: the width and painted strips on the driveway, his daughter’s bridal business in the Subject Property, and renting the basement. Mr. Mushtaq submitted that he has addressed all of the City’s concerns regarding

conformity to the Zoning By-law. It is Mr. Mushtaq's view that the remaining variance conforms to the general intent and purpose of the Zoning By-law.

Mr. Mushtaq testified that in his view the remaining variance is minor. He testified that only one resident opposed his application at the Committee. Mr. Mushtaq noted that the resident that complained at the Committee by letter was concerned about the presence of the business and the possibility of an apartment. Mr. Mushtaq testified that the business has been removed and that there has never been and never will be a basement apartment. Mr. Mushtaq further maintained that the side entrance does not encumber the use of the side yard. It is his view that the remaining variance is minor.

Mr. Mushtaq testified that the remaining variance is desirable because it provides an additional access to the home for his family.

The Board has carefully considered all the *viva voce* evidence and documentary evidence of Mr. Mushtaq. The Board finds that the testimony of Mr. Mushtaq to be credible and trustworthy.

The Board notes that the City did not attend the hearing to oppose the requested variances.

The Board further notes that one of the main problems with the original application was that the Applicant's daughter's bridal business was located in the subject dwelling. This was clearly not allowed by the Zoning By-law and did not conform to the general intent and purpose of the Official Plan and the Zoning By-law and was not desirable. However, the Applicant has withdrawn this variance and it is no longer an issue.

The Board further notes that the City had concerns with the width of the Applicant's driveway and the painted stripes on it. It was Mr. Mushtaq's evidence that he has removed the strips and addressed the width of the driveway pursuant to the City's instructions. The Board finds Mr. Mushtaq's testimony credible that the Applicant is not now nor will she in the future rent the basement. In addition, there was documentary evidence that the City inspected the premise and concluded that there were no tenants.

The Board finds that the variance is sensitive to the adjacent properties and the surrounding area. It respects the character of the Neighbourhood and reinforces the prevailing pattern of the streetscape. As such, the Board finds that the remaining variance conforms to the general intent and purpose of the Official Plan.

The Board further finds that the variance conforms to the general intent and purpose of the Zoning By-law, as it does not inhibit the function of the required side yard. The Board finds the Applicant is not renting the basement apartment. The painted strips and width of the driveway have been addressed as per the City's instructions. As such, the Board finds that the remaining variance conforms to the general intent and purpose of the Zoning By-law.

The Board notes that no residents have opposed the variance at the hearing. The Board finds that there are no unacceptable adverse impacts on adjacent property owners and the surrounding area.

The Board further finds the remaining variance is desirable.

Based on the above reasons, the Board finds that the remaining variance satisfies the four tests outlined in subsection 45(1) of the *Planning Act*.

THE BOARD ORDERS that the appeal is allowed in part, and the following variance to By-Law 0225-2007 is authorized:

1. The construction of a basement entrance stairwell in the interior side yard of the existing dwelling;
Whereas By-law 0225-2007, as amended, does not permit stairs, stairwells or retaining walls, to facilitate an entrance located below grade at any point, or facilitate a direct entrance to the basement interior side yards in this instance.

"M.G. Somers"

M.G. SOMERS
MEMBER