

ISSUE DATE:

**July 14, 2009**



PL081393

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: Antonio Belas  
Subject: Minor Variance  
Variance from By-law No.: 0225-2007  
Property Address/Description: 530 Indian Road  
Municipality: City of Mississauga  
OMB Case No.: PL081393  
OMB File No.: PL081393  
Municipal No. A245/08

**APPEARANCES:**

**Parties**

City of Mississauga

Antonio Belas

**Counsel**

Marilyn Sparrow

Gerald Swinkin

**DECISION DELIVERED BY J. de P. SEABORN AND ORDER OF THE BOARD**

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The matter before the Board is an appeal by Antonio Belas (Applicant) from a decision of the Committee of Adjustment (Committee) for the City of Mississauga (City). The Committee refused to authorize a minor variance from the provision of By-law 0225-2007 (By-law) with respect of dwelling depth.

In support of the variance sought the Applicant called a qualified land use planner, Mr. Brown and an arborist, Mr. Plowman. In opposition to the variance, the City called the zoning examiner, Ms. Leckey, its arborist, Mr. Schmidt and a qualified land use planner, Mr. Breveglieri. Surrounding neighbours (Mr. Phillips, Mr. Beausoleil, Mr. Downes and Mr. Clark) each testified in opposition to the variance.

Mr. Brown explained in his evidence that while the minor variance from the By-law that the Applicant seeks relates to dwelling depth, the request is unusual as the variance is required to facilitate the construction of an indoor swimming pool in the rear yard. Under the By-law, the maximum building depth permitted is twenty (20) metres. The proposal is to excavate at the rear of the existing home and construct an underground tunnel that will connect the house with the indoor pool, substantially extending the depth of the dwelling. While a significant part of the extension would consist of the underground tunnel, it must be included in the calculation of dwelling depth. Accordingly, the variance required is to allow a dwelling depth of eighty-five (85) metres (exact request is for 84.66 metres), recognizing that a significant part of the additional depth relates to both the length of the existing home and underground tunnel.

The Applicant constructed his home in 2003, prior to the enactment of the By-law from which a variance is now sought. While the dwelling depth of the family home is approximately thirty-three (33) metres, no variances were required to accommodate the original construction. In fact, the Applicant could have included an indoor swimming pool as of right (subject to GFA requirements) as there was no restriction, in respect of dwelling depth, in the by-law that governed the original construction.

The opposition to the variance (both by the City and local residents) largely relates to two issues. First, because the pool will be enclosed, a large structure (much bigger than an accessory structure) will dominate the Applicant's rear yard, blocking existing views. Second, a number of trees need to be cut down to accommodate the construction of the pool and remaining trees might be damaged. The City planners concluded that the impact of the proposal is not minor, the provisions of section 45(1) of the *Planning Act* are not satisfied and accordingly, a variance from the By-law to accommodate increased dwelling depth should not be authorized.

In order to properly evaluate the variance and potential impact, it is important in this instance to consider the lot involved, existing dwelling, and surrounding homes. Mr. Brown provided detailed site statistics. The Applicant's lot is unique and situated within the Clarkson-Lorne Park planning district. The property is large, even for this residential enclave of beautiful homes, with a lot area of 6,210 m<sup>2</sup> or 1.53 acres. The frontage is 35.05 metres and the lot depth is 186 metres. The existing dwelling is just over 658 m<sup>2</sup> (or 7,000 sq ft). The indoor pool is proposed to be 300 m<sup>2</sup> (about 3,200 sq ft) and the

total GFA for the two buildings (considered as one for By-law purposes) is about 10,321 sq ft, with a lot coverage of about 12.7%. The depth of pool building is planned at about 27 metres and the existing house has a depth of 33 metres. The remaining building depth is represented by the tunnel, which means that there is a significant above ground break between the two structures. As well, the indoor pool is planned to be situated about two-thirds from the front lot line, which will result in about 65 metre of landscaped amenity area between the rear of the pool structure and the rear lot line. The rear of the lot is heavily treed and will remain undisturbed.

The length (depth of lot) means that it traverses the rear yards of particular homes on Kane Road, Gladwyne Court, and Vermillion Court. Residents on Gladwyne Court have a view through the centre of the Applicant's property to the rear yards of homeowners on Kane Road. One of the complaints of the residents who testified was that this view will now be obscured by the pool structure. The neighbours testified that they generally enjoy a clear view through the trees across the Applicant's rear yard. The enclosed pool house will change this view.

While the Board appreciates the well-articulated concerns of the neighbours, the Board finds that there simply is no discernable impact associated with the variance sought. The Applicant's lot is unique given its depth. If there were street access at the rear of the lot, it would no doubt be two lots and the neighbours view would be to another family home. While the lots in the area are generous and many of them include rear yard pools and landscaped amenity space, there should not be any expectation for homeowners to enjoy unobstructed views. The Applicant has undertaken to plant cedar trees to mask the structure as best he can. The plans show a tasteful building that will blend in with the elegance of the surrounding properties. There was no evidence to suggest that the neighbours will not be able to continue to enjoy their properties as a result of the indoor pool. The Board finds the impact of the variance to be minor.

The City planners testified that the size of the variance and the concept, as proposed, fails to maintain the purpose and intent of the official plan and the zoning by-law and is not desirable. While the Board agrees that on its face the variance is substantial, the facts of this case are exceptional. The proposal will hardly set a precedent. The lot is extraordinary and it is highly unlikely other homeowners in Lorne Park will determine it feasible to construct an underground passageway to link up with a

fully enclosed indoor pool. Few, if any lots, could possibly accommodate such a scheme. The Board is also persuaded by the opinions offered with respect to why the 20 metre dwelling depth was added to the By-law when enacted in 2007. The rationale was to limit the length of new homes so neighbours would not be subjected to looking over at blank walls. In this instance, the family home is not being extended *per se* because the extended dwelling beyond the existing home is actually the tunnel. What is technical about this variance is that it includes additional dwelling length that cannot be seen by the neighbours.

Dealing with the second issue, tree removal, the Board finds that on the facts of this case the necessity to remove some trees should not be a barrier to the variance. The reason for this conclusion is simple. First, an outdoor pool would be permitted on the Applicant's lot as of right. Trees would have to be removed, in accordance with an appropriate tree removal plan, to accommodate a pool. No variance would be required to construct an outdoor pool. Second, the Board is persuaded by Mr. Plowman's evidence that the plan for tree removal is appropriate. There are approximately 221 trees on the site and only 13 are scheduled to be removed, resulting in a tree retention rate of 94%. While it is always preferable to develop without any tree removal, in this instance there is an adequate plan in place and the Applicant will be required in any event to obtain a Private Tree Removal Permit, which provides for a further level of protection. Mr. Schmidt suggested that one of the trees affected is likely a butternut, which requires special protection. The Board is confident that further investigation can confirm the precise species and thereafter a plan can be agreed upon to protect the tree, if necessary. Tree protection zones will be implemented and are required to remain undisturbed at all times. Moreover, as described above, the indoor pool is proposed to be located just over 60 metres from the rear property line, which is heavily treed. The site plan proposes as well that cedar hedges be planted to obscure the structure, adding additional trees to the site. The Board finds that the removal of approximately 13 trees, given the size of the property and the number of existing trees on site, is a minor impact and does not constitute a reason to deny the variance in respect of dwelling length. As indicated previously, outdoor pools are prevalent in the neighbourhood, permitted as of right and in many instances require tree removal, which does not trigger a variance (although applicable tree removal permits are required).

Finally, during the course of the hearing an issue arose with respect to the need for an additional variance from the By-law to permit a minimum combined width of side yards. After the hearing had concluded, Counsel confirmed in writing that an additional variance is required to accommodate the project. Based on the submissions of Counsel, the Board finds that this amendment to the original application is minor and therefore no further notice is necessary.

Based on the evidence provided and considering the uniqueness of the project and property involved, the Board finds that the variances sought should be authorized as they individually and collectively meet the four tests set out in section 45(1) of the *Planning Act*. In arriving at this decision, the Board has also had regard to matters of provincial interest and the decision of the Committee of Adjustment.

For all of the reasons given, the appeal is allowed and two variances from the By-law are authorized, as follows:

1. Minimum combined width of side yard of 8.17 metres is authorized whereas the By-law would require, in this instance, 9.46 metres.
2. A dwelling depth of 85 metres is authorized, whereas under the By-law dwelling depth cannot exceed 20 metres.

This is the Order of the Board in respect of the variances. The Applicant's proposal is subject to site plan control.

"J. de P. Seaborn"

J. de P. SEABORN  
VICE CHAIR