

ISSUE DATE:

July 21, 2009



PL090027

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: Bisnauth Liladhar
Subject: Minor Variance
Variance from By-law No.: 0225-2007
Property Address/Description: 7476 Discus Crescent
Municipality: City of Mississauga
OMB Case No.: PL090027
OMB File No.: PL090027
Municipal No. A-426-08

APPEARANCES:

Parties

Bisnauth Liladhar

Agent

M. Brookes

DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD

Background

Bisnauth Liladhar (the Appellant) applied to the Committee of Adjustment of the City of Mississauga for five variances to Zoning By-law 0225-2007 in order to permit the construction of a garage on a property at 7476 Discus Crescent, Mississauga. The Committee of Adjustment refused the application, which has resulted in this appeal by Mr. Liladhar.

The Appellant constructed a garage at the rear of the subject property in 2007 without obtaining a building permit. The construction was discovered by the City of Mississauga in 2008 and subsequently the Appellant applied for the required variances in order to obtain the permit.

The subject property is in the northeast section of the City of Mississauga. The lot measures approximately 30 ft. by 125 ft. and contains a semi-detached dwelling. At the rear of the property is an open space area that is part of the valleyland of a tributary of Mimico Creek. The garage measures approximately 17 ft. by 18 ft. and is located at

the rear limit of the subject property abutting the valley area. An existing driveway at the side of the house has been extended to access the garage.

VariANCES

Permission to retain the garage on the property requires the following five variances from Mississauga Zoning By-law 0225-2007, as amended:

1. A total lot coverage of 44.3% of the lot area is proposed, whereas the By-law permits a maximum lot coverage of 35% of the lot area;
2. An insufficient rectangular area within a garage of 5.18 m. (16.99 ft.) by 5.49 m. (18.01 ft.) is proposed, whereas the By-law requires a minimum rectangular area within a garage of 2.75 m. (9.02 ft.) by 6.00 m. (19.68 ft.);
3. An insufficient driveway width of 2.49 m. (8.16 ft.) is proposed, whereas the By-law requires a minimum driveway width of 2.60 m.(8.53 ft.);
4. A 0.0 m. (0 ft.) setback from the driveway to the side lot line is proposed, whereas the By-law requires a minimum of 0.60 m. (2.0 ft.) setback from the driveway to the side lot line;
5. An insufficient rear yard setback of 0.22 m. (0.72 ft.) to a G1, Greenbelt zone is proposed, whereas the By-law requires a minimum 5.0 m. (16.40 ft.) setback to a G1, Greenbelt zone.

These are the same variances that were refused by the Mississauga Committee of Adjustment.

EVIDENCE

The Board heard evidence on behalf of the Appellant from Dirk Blyleven, Principal of Beacon Planning Services. Mr. Blyleven has more than 30 years of professional experience in the planning field. He was qualified by the Board as an expert in land use planning.

No other parties appeared at the hearing and the Board heard no evidence in opposition to the proposal.

Mr. Blyleven contends that the proposal is appropriate and that the variances meet the four tests under subsection 45 (1) of the *Planning Act*.

The property is designated Residential Low Density II in the Mississauga Official Plan which permits the existing residential use. The Board heard that the valleyland area at the rear of the property is designated Greenbelt and that the floodplain encompasses the greenbelt area and encroaches onto the residential lots. Mr. Blyleven noted that the hatched area on the map included in Exhibit 1, Tab 4, p. 10 depicts the floodplain area and that it affects the subject property. Since the floodplain encroaches onto the property, the approval of the Toronto and Region Conservation Authority (TRCA) is required.

Mr. Blyleven notes that the TRCA has approved the proposal based upon a valley planting plan which the Appellant has agreed to complete (Exhibit 1, Tab, 7, p. 30). In view of resolution of TRCA's concerns, Mr. Blyleven submits that the proposal conforms to all policies and requirements of the Official Plan. Mr. Blyleven's expert opinion is that the proposal maintains the general purpose and intent of the Mississauga Official Plan.

Mr. Blyleven testified that the property is zoned RM1 in Zoning By-law 0225-2007 which allows the residential use. He also stated that the garage and driveway are permitted uses in the By-law.

The valley area to the rear of the property is zoned Greenbelt, while a portion of the property which is shaded on the zoning map (Exhibit 1, Tab 4, p. 11) is floodplain. As noted above, due to the floodplain indication, approval of the TRCA is required. Variance # 5 above is required because of the Greenbelt zoning at the rear of the property. However, TRCA is satisfied that reducing the setback to 0.22 m. will not compromise floodplain issues or protection of the valley area based upon the planting program that the Appellant will undertake.

The By-law's requirements for lot coverage are set out in the table on Exhibit 1, Tab 4, p. 15. Mr. Blyleven contends that variance #1 above, for coverage is more a function of the small size of the property than excessive development of the lot.

With regard to the size of the garage, Mr. Blyleven notes that the By-law requires a depth of 6.0 m. (19.7 ft.). Mr. Blyleven submits that the depth that has been provided 5.49 m. (18.01 ft.) is sufficient to contain vehicles, but does not meet the By-law's standard. However, this does not impair the functioning of the garage.

The requirement for driveway width is set out in section 3.1.1.6 of the By-law (Exhibit 1, Tab 4, p. 17). The standard requirement is for a width of 2.6 m. (8.53 ft.). Mr. Blyleven notes that the existing driveway has the same width of 2.49 m. (8.17 ft.) as the proposed extension of the driveway to the garage. Therefore, Variance # 3 above will allow the same width as the existing driveway to be continued into the new garage.

Mr. Blyleven stated that variance #4 above reflects the side yard setback of the existing driveway on the property. The same setback has simply been maintained for the portion of the driveway that extends to the garage.

In view of the above, Mr. Blyleven's expert opinion is that the variances maintain the general purpose and intent of Zoning By-law 0225-2007.

Mr. Blyleven's opinion is that the proposal is desirable for the use of the land. The driveway width and setback from the side yard are really reflecting the existing condition. The reduced setback from the Greenbelt zone is the most significant variance, but Mr. Blyleven indicated that the area immediately behind the garage is landscaped park. The natural features of the valley area are another 30.48 m. (100 ft.) beyond the location of the garage. The intent of the By-law's requirement for a setback is to buffer valley areas and natural habitat areas from urban uses. Since there is such a substantial separation, there is no need in this location for the 5.0 m (16.4 ft.) setback from the greenbelt zone in order to protect the natural area.

Mr. Blyleven contends that the variances are minor. He stated four out of the five variances are small in magnitude. The variance for garage setback is a larger variance from the By-law's standard than the others. However, the proposed setback has been approved by TRCA, which is the critical agency in determining the importance of maintaining the setback distance from the Greenbelt area. No significant negative impact is anticipated from any of the variances. Mr. Blyleven submitted that the surrounding property owners are in support of the proposal (Exhibit 1, Tab 10, pp. 51-

53). Mr. Blyleven's expert opinion is that all of the variances meet the test of being minor.

Mr. Blyleven contends that the proposal meets all four tests under subsection 45 (1) of the *Planning Act*.

Findings

The evidence provided by the Appellant is uncontested and Mr. Blyleven's expert evidence is uncontradicted. The Board has reviewed the evidence and the submissions and finds that Mr. Blyleven's expert opinion is consistent with the content of the planning information submitted. The Board accepts and relies upon the evidence provided on behalf of the Appellant.

Based upon the evidence the Board finds that the proposal maintains the general purpose and intent of the Mississauga Official Plan. The proposal does not contravene any of the Plan's policies, and the provisions regarding floodplain and Greenbelt have been satisfied through the approval of the TRCA.

Based upon the evidence, the proposal maintains the purpose and intent of Zoning By-law 0225-2007. The general requirements and ability of the By-law to control built form are not compromised by the proposed variances. Two of the variances are simply maintaining and extending existing conditions. The proposal does not represent overdevelopment of the lot. The garage is large enough to fulfill its function and the Greenbelt requirements have been fulfilled through the agreement with TRCA.

The Board finds that the proposal is desirable for the use of the land. The garage will enhance the use of the property and will not detract from any established uses in the surrounding area.

In addition, the Board finds that the variances are minor. Most represent a small degree of difference from the standards established in the By-law. Any impact of the variance for setback from the Greenbelt area has been mitigated by the agreement with TRCA. No significant negative impacts are anticipated from any of the variances.

Based upon the above, the Board finds that the variances meet the four tests under subsection 45 (1) of the *Planning Act*.

The Board allows the appeal and authorizes the variances. In order to ensure that impacts are minimized from the reduced setback from the Greenbelt area, the Board is applying a condition to the approval that the requirements of TRCA regarding a compensatory planting program must be satisfied.

Order

The Board Orders that the appeal is allowed and the variances to Zoning By-law 0225-2007 of the City of Mississauga are authorized subject to the following condition:

- The Appellant shall fulfill the requirements of the Toronto and Region Conservation Authority regarding the compensatory planting program referenced in the letter of November 14, 2008 from the Conservation Authority to the City of Mississauga.

So Orders the Board.

“C. Conti”

C. CONTI
MEMBER