

ISSUE DATE:

Jan. 31, 2011



PL090970

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

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| Appellant: | Sharine Ahmed |
| Applicant: | Sharine Ahmed & Shamima Parveen |
| Subject: | Minor Variance |
| Variance from By-law No.: | 0225-2007 |
| Property Address/Description: | 3529 Old Orchard Park Drive |
| Municipality: | City of Mississauga |
| OMB Case No.: | PL090970 |
| OMB File No.: | PL090970 |
| Municipal No.: | A312/09 |

APPEARANCES:

Parties

S. Ahmed and S. Parveen

City of Mississauga

Counsel

A. Wilson-Peebles and
L. Vyas

DECISION DELIVERED BY J. CHEE-HING AND ORDER OF THE BOARD

The Applicants (S. Ahmed and S. Parveen) have appealed the decision of the Committee of Adjustment ("COA") of the City of Mississauga's refusal of their application for a minor variance to permit an exiting driveway having a width of 7.5 m to remain whereas the By-law 0225-2007 ("ZBL") permits a maximum driveway width of 6.2 m.

At the hearing, the Applicants were self-represented and the City was represented by Counsel, a staff planner and a by-law enforcement officer. The City opposes the minor variance application and supports the decision of the COA.

Requested Variance:

1. To permit the existing driveway to remain with an increased width of 7.5 m whereas the By-law permits a maximum driveway width of 6.2 m.

The Evidence:

The following facts are not in dispute. The subject property is located at 3529 Old Orchard Park Drive. It is designated Residential low density II, and zoned R4. The ZBL permits a maximum driveway width of 6.2 m. The dwelling was constructed in 1997 and was bought by the Applicants in 2002. Sometime between these intervening years and before the Applicants purchased the property, the driveway was widened to 6.75 m. The Applicants subsequently widened the driveway to 7.5 m in 2006. The City's By-law Enforcement, acting on a complaint, inspected the driveway in 2008 and advised the Applicants that the width was not compliant with the ZBL.

The Applicants testified that when they bought the property it was already 6.75 m in width. Due to the state of the driveway edges, they added curbs. This resulted in an additional 0.75 m to the driveway width. They testified that a driveway wide enough to accommodate three cars abreast of each other was necessary because of their large family. They added that their two car garage is used for storage and they are unable to park any of their cars inside the garage. They contend that there are many other driveways on the street that are wider than what the ZBL permits, they submitted as an exhibit a list of 27 homes on the subject street that have driveways that are not in compliance with the ZBL in terms of width (Ex. 3). It is their testimony that: the difference of 1.3 m in driveway width does not change the character of the neighbourhood; that it is minor; that many of the homes do have wider driveways that are not in compliance with the ZBL; and that it would involve a financial hardship for them to remove part of the asphalt driveway to comply with the ZBL.

The City's planning witness testified that the intent of the ZBL restriction on driveway widths is to maximize opportunities for front yard landscaping to reduce the impact of hard surface areas on the streetscape. Front yard landscaping assists in surface water drainage and run-off. The ZBL requires that the driveway width be not more than 50 percent of the lot frontage. The purpose is to achieve an appropriate

balance with the front yard landscaping. The existing driveway width at 7.5 m is a 20 percent increase to the permitted width of 6.2 m. The result is a loss of front yard landscaped frontage. It is the planner's expert evidence that the variance does not meet the four statutory tests found in s. 45(1) of the *Planning Act*. It fails to meet the intent of the OP to maintain a proper streetscape and it fails to meet the intent of the ZBL to achieve a proper balance of soft and hard surfaces. It is his opinion that the driveway is excessively wide and this increase in hard surface area is not in keeping with the character of the neighbourhood nor is it desirable for the appropriate development of the property.

The City's By-law enforcement officer testified that this property has been the subject of a number of complaints about the use of the basement as an illegal accessory rental unit. The side entrance to the basement was ordered to be permanently closed. The basement is fully finished. But for a stove, it would have met the definition of an accessory apartment unit. The City submitted that allowing the driveway width of 7.5 m to accommodate three cars would increase the future likelihood of the basement being used as an illegal accessory apartment unit.

In response to the Applicants' contention that there are many driveways on the street that are wider than what the ZBL permits, the City submitted that the By-law enforcement department acts on complaints and will continue to do so. There have been many cases of non-compliance with permitted driveway widths. In these situations, By-law enforcement staff advise the property owners that a minor variance is required and to seek the appropriate remedy at the COA.

Board Findings:

The Board finds that the existing driveway does not comply with the performance standards of the ZBL with respect to driveway width. The Board prefers the testimony of the planning witness for the City that the 7.5 m wide driveway does not maintain the general intent of the OP and the ZBL, that it will create adverse impacts to the streetscape and that it is not desirable. The Board finds that the intent of the ZBL restriction on driveway widths is to maximize opportunities for front yard landscaping to reduce the impact of hard surface areas on the streetscape. The subject driveway does not allow for this as it is wider than what the ZBL permits.

The Applicants' driveway was widened twice. While the Board is sympathetic with the Applicant's position that they purchased the property with an already widened driveway, it was their responsibility to check with the City to ensure that it complied with the ZBL standards. Having three cars parked abreast on the driveway while a convenience to the Applicants is not a valid planning ground or test. Nor does convenience satisfy the desirability test of section 45.1 of the *Planning Act*. The City submitted that the Applicants could park two cars in their two-car garage. The Applicants' response that the garage is being used for storage is in the Board's mind not a satisfactory response. It was the evidence of the City's planner that the City does not normally authorize this type of variance and he would have given the same planning opinion if the Applicants were seeking the same variance for the first widening.

The Applicants contend that there are other driveways on the street that are wider than what the ZBL permits. The City's planner in his evidence also made the same observation during his site visit. However, the fact that there are other (probably illegal) non-compliant driveways on the street does not make this variance application any more acceptable. It was the evidence of the By-law enforcement officer that complaints made about other driveways will be thoroughly investigated and the same standards will apply to those homeowners. The Board finds that there is not an inconsistent application of the ZBL performance standards in this particular situation.

It is for these reasons that the Board finds that the existing driveway widened to 7.5 m fails the statutory tests found in section 45(1) of the Act in that it does not maintain the general intent of the ZBL nor is it desirable for the development of the subject property.

Therefore, the **BOARD ORDERS** that the appeal is dismissed and the variance is not authorized.

This is the Order of the Board.

"J. Chee-Hing"

CHEE-HING
MEMBER