

ISSUE DATE:

**Aug. 3, 2011**



PL100210

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: Shahid Baig  
Subject: Minor Variance  
Variance from By-law No.: 0225-2007  
Property Address/Description: 1325 Daniel Creek Road  
Municipality: City of Mississauga  
OMB Case No.: PL100210  
OMB File No.: PL100210  
Municipal No.: A-001/10

**APPEARANCES:**

**Parties**

Shahid Baig  
City of Mississauga

**Counsel**

S. Mohammedally  
A. Wilson-Peebles and L. Vyas

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

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This was a hearing in the matter of an appeal by Shahid Baig from a decision of the Committee of Adjustment of the City of Mississauga that refused to authorize a minor variance for a property known municipally as 1325 Daniel Creek Road.

The variance sought was for a driveway width of 10 metres whereas By-law 0225 -2007 of the City of Mississauga permits a maximum driveway width of 6.10 metres in this particular case.

The subject lands are located in the East Credit District which forms part of the Mississauga Plan (Official Plan). The subject lands are designated "Residential-Low Density II" by the Official Plan. The subject property is currently zoned R4-Residential under By-law 0225 -2007 of the City of Mississauga.

## **Context and Evidence**

Mr. Baig testified on his own behalf and Ms S. Segreti, a qualified land use planner employed by the City of Mississauga and assigned to review applications to the City's Committee of Adjustment provided her assessment and planning opinion regarding the appropriateness of the variance application now before the Board.

The area of Daniel Creek Road by all accounts is a stable residential area of single family homes on lots having an average frontage of 12.2 metres.

Mr. Baig in the summer of 2009 acquired the subject property. He subsequently retained a paving contractor to enlarge the driveway and parking area in front of his home. He freely admits that he never contacted the municipality to determine the zoning regulations governing his property. He testified that since some 14 other properties on the street had enlarged driveway areas that he believed his enlargement would be all right. At the time Mr. Baig acquired the property he could park two cars in the attached garage and two cars in the driveway area. He advised the Board that members of his extended family were living with him in the home and that family as a matter of convenience needed additional parking spaces on the property to meet the family's growing needs. There is some dispute amongst the parties as to whether the driveway expansion that Mr. Baig constructed can accommodate one or two additional cars. The best photographic evidence presented by the City is that two additional cars may be parked in the expanded area with some overhang onto the grass portion of the front yard.

Shortly after completing the work on the expanded driveway as shown on a site plan (Exhibit 2, Tab 2, Page 6), Mr. Baig received a letter from the City's By-law Enforcement Officer advising that the enlargement was not in compliance with the City's Zoning By-law requirements and that he must either cut back the continuous driveway width to conform (6.10 metres) or install a permanent grade separation barrier of at least 0.1 metres in height to separate what could be termed the walkway from abutting a driveway.

Mr. Baig elected to seek relief through the Committee of Adjustment which rejected his application on the recommendation of City Planning Staff.

Ms S. Segreti testified that the zoning regulation in Section 12.3 of Table 4.2.1 states that the maximum driveway width is the “lesser of 8.5 m or 50% of the lot frontage.”

She opined that the purpose of this Zoning By-law regulation was to ensure that the parking areas in residential zones did not dominant the streetscape and that this had been clearly articulated to City Council in a planning report dating back to 1992 (Exhibit 2 Tab 15). She also referred the Board to Section 3.2.3.2 of the Mississauga Official Plan which requires that “design issues related to built form, scale, massing, orientation, parking, overshadowing and the quantity and quality of open space will be priorities in assessing the merit of residential development.” It was her testimony that the parking regulations were in place to ensure good urban design in new subdivisions and were based upon the lot frontage of residential properties in the City.

She opined that the parking area as developed by Mr. Baig would not meet the intent and purpose of the Official Plan as reflected in the Zoning By-law’s Regulation for off street parking in this residential zone. She noted that on a linear basis the parking area constitutes about 82% of the lot frontage of this property and that this was not minor and did not in her opinion reflect appropriate development for the area. She confirmed her opinion through a computer simulation of what the streetscape might look like if parking in the manner developed by Mr. Baig were to be permitted along the street. It was her opinion that such a parking scheme would not represent good urban design as required by the City’s Official Plan and reflected in long standing Zoning By-law regulations.

### **Findings and Conclusions**

The Board, after carefully reviewing the evidence, the exhibits filed and the submissions made by the parties, makes the following findings.

The Board finds that there are no consistency issues with any Provincial Planning policies resulting from the variance applications and that the matter should be decided based upon the local planning policies of the City’s Official Plan and Zoning By-law.

The issue in this case is whether the proposed variance represented by the driveway constructed by Mr. Baig would meet the four tests set out in section 45(1) of the *Planning Act*. The fact that the driveway expansion exists while helpful to understand the potential impacts that might result from the authorization of the variance is not a determinative factor in the Board's findings. The four tests prescribed by the *Planning Act* are the determinative factors that the Board must consider.

Nor does it matter that there may be other contraventions of this particular Zoning By-law regulation on the same street. The facts in this case are that a complaint was filed and the City, as is its policy, acted upon that complaint. This action by the City does not in the Board's finding constitute any prejudice to Mr. Baig. The enforcement of municipal by-laws on a complaint basis is a common municipal practice. Nor is it a defence for an individual to state that since others may have broken the law the individual can do the same.

The Supreme Court of Canada in *Toronto (City) v. Polaj* stated that:

It is no defence against his action to say that there are other cases of infringement which had not been questioned.

Similarly the Board has determined in other cases *Bains v. Brampton (City) Committee of Adjustment* (2005, O.M.B.D.No.1271)

That inconsistent by-law enforcement can not be a valid reason to justify allowing the Applicant to retain a widen driveway while other residents retain their driveways. Municipalities act on complaints of By-law infractions and it is possible that others residents may also face action as a result of their driveways if these exceed the requirements of the Zoning By-law.

Mr. Baig asserts that the construction of the driveway in the manner before the Board provides a convenience to his expanding extended family that currently lives on the property with him and is consistent with other driveways that exist along his side of the street.

While the Board is sympathetic to the submissions of Mr. Baig and firmly believes that he acted in good faith the Board is obligated to consider the variance sought against the four tests set out in Section 45 (1) of the *Planning Act*. The convenience of

an individual property owner is not a sound planning rationale or test prescribed by the *Planning Act* upon which the variance is to be judged.

The Board accepts the uncontradicted evidence for the municipal planner that the driveway and associated parking area as constructed does not meet the intent and purpose on the City's Official Plan as reflected in the Zoning By-law Regulations and would result in poor urban design that would not constitute appropriate development for this part of the City of Mississauga. Nor does the Board consider a driveway width as measured by the Zoning By-law that constitutes about 82% of the linear lot frontage of the property to be minor. The Municipality has clearly established the planning rationale for its parking regulations dating back to the early 1990's which are designed to ensure that off street parking areas do not dominant the front yard area of residential streets. The Board finds this parking regulation to be reasonable and compelling and designed to ensure that appropriate off street parking areas are developed in the front yard areas of residential properties in R4-Residential Zone. The construction undertaken by Mr. Baig does not meet these tests.

It is the Board's finding in this case that for the reasons set out in this decision, the four tests prescribed by the *Planning Act* have not been met and the variance should not be authorized.

Accordingly; **THE BOARD ORDERS** that the appeal is dismissed and the variance is not authorized.

"J. P. Atcheson"

J. P. ATCHESON  
MEMBER