

ISSUE DATE:

Aug. 3, 2011



PL100282

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:	Salvatore Aquino
Subject:	Minor Variance
Variance from By-law Number:	6593 (Hamilton)
Property Address/Description:	168 Rymal Road East, Hamilton
Municipality:	City of Hamilton
Municipal File No.:	HM/A-09:344
OMB Case No.:	PL100282
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APPEARANCES:

Parties

Salvatore Aquino

City of Hamilton

Counsel

M. Minkowski

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. C. DENHEZ ON
JUNE 28, 2011, AND ORDER OF THE BOARD**

This dispute has been settled. In 2010, Salvatore Aquino (the Applicant) applied for several variances, to build a substantial private garage at 168 Rymal Road East, in the City of Hamilton (the City). The Committee of Adjustment turned down the application, and he appealed to the Board.

On the morning of the hearing in February, 2011, he arrived with a downscaled proposal. At that hearing, the Board held that under subsection 45(18.1.1) of the *Planning Act*, the change from the original application was sufficiently minor that it did not warrant re-circulation. Otherwise, the Board agreed to adjourn proceedings, to permit the Parties to consider the prospects further.

On further discussion, including consultation with an interested neighbour, Ms Featherstone, the Parties reached consensus on a downscaled version. Instead of several variances for a large garage, the proposal was reduced to a single variance for an accessory structure of 3.05 metres square.

This final variance would still be necessary, because this accessory structure was technically in the “front yard” of the property, under Zoning By-law No. 6593 applicable to this “Suburban Agriculture and Residential ‘B’ District”. However, it was agreed to locate it 52.79 metres (over 173 feet) back from the front property line.

For variances, the criteria (often called “the four tests”) are set out at subsection 45(1) of the *Planning Act*, namely that a variance from the applicable By-law may be authorized if it is minor, desirable for the appropriate development or use of the property, and maintains the general intent and purpose of both the Zoning By-law and of the Official Plan.

As to the application of those four tests to the situation at hand, the City’s expert Planner Ms Mihaljevic provided the sworn opinion that the variance, as revised, would meet all statutory criteria. She said the revised application conformed to the Provincial Policy Statement, the Growth Plan for the Greater Golden Horseshoe, the Hamilton-Wentworth Official Plan, and the City Official Plan. By locating the structure far from the road, it would maintain the intent of Zoning By-law 6593. As for being minor, and desirable for the appropriate development or use of the property, it was her opinion that “the residential character of the area will be maintained as there is currently a mixed form of development in the area consisting of single detached dwellings and townhouse dwellings. In addition, the proposed accessory building will not have a negative impact on the character of the neighbourhood.”

The Board has carefully considered all the evidence, as well as the submissions of all Parties. The Board finds no dispute, and agrees with the undisputed expert opinion above, that the revised version meets each of the four tests of the *Planning Act* for a minor variance. The Board therefore disposes of this matter as follows:

THE BOARD ORDERS that the variance to Zoning By-law 6593 of the City of Hamilton is hereby authorized in accordance with the terms agreed to by the Parties, namely to permit an accessory structure measuring 3.05 metres by 3.05 metres to be located in the front yard, not less than 52.79 metres from the front lot line and not less than 0.65 metres from the western side lot line.

It is so Ordered.

“M. C. Denhez”

M. C. DENHEZ
MEMBER