

ISSUE DATE:

July 21, 2010



PL100469

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: Azmy Abdel-Meseeh
Subject: Minor Variance
Variance from by-law number: 0225-2007
Property Address/Description: 5590 Rivergrove Avenue
Municipality: City of Mississauga
Municipal File No.: A-136/10
OMB Case No.: PL100469
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APPEARANCES:

Parties

Mohmoud Khorram

Counsel

Mark Fahmy

DECISION DELIVERED BY S. J. SUTHERLAND AND ORDER OF THE BOARD

Azmy Abdel-Meseeh (Applicant/Appellant) owns a property at 5590 Rivergrove Avenue (Subject Property) in the City of Mississauga (City). He has appealed a decision of the Committee of Adjustment (COA) refusing an application for the following two variances from Zoning By-law 0225-2007 (ZBL) to permit an existing driveway to remain:

- a width of 9.8 m, whereas a maximum width of 6.1 m (20 ft) is permitted, and
- a set back of 0.0 m to the side property line, whereas a minimum set back of 0.60 m from the side property line is required.

Mark Fahmy, an articling law student in Ontario, qualified to practice law in New York State, represented the Applicant/Appellant at the hearing. The City was not present, and no expert land use planning evidence was entered. No one spoke in opposition to the application.

Mr. Fahmy told the Board that when the house was built in 1989 with a garage frontage of 22 ft. there were no restrictions on driveway width. He says it does not make sense that a by-law would result in a driveway width shorter than the existing garage. He pointed out that the City has paved the front entrance to the property with a 22 ft. curb.

He said the gravel stone driveway that was in existence when the Applicant/Appellant purchased the house in December, 1992 had a width of 27 ft. When a legal basement apartment was added in 1994 the Applicant/Appellant constructed a walkway of concrete patio stones leading from the sidewalk to the back yard to facilitate the tenant's access to the backyard. In 1995 this stone walkway was replaced with a continuous asphalt surface, merging it with the driveway. The Applicant/Appellant said he did this because he was getting tickets for parking on the boulevard and the parking enforcement officer suggested he expand his driveway to avoid this happening.

Mr. Fahmy said the position of the COA that, "approval of the requested variance would result in allowing an excessively wide hard surface area which would not be in keeping with the character of the neighbouring properties" is not born out by the facts. He introduced a series of 46 photographs, each representing a different property along Rivergrove Avenue (Exhibit 2) which appear to have driveways roughly the width being applied for by the Applicant/Appellant, some with no setback from the side property line, and all extending beyond the width of the garage. He maintained the Applicant/Appellant's driveway is indeed in keeping with the neighbouring properties in the area.

Mr. Fahmy also mentioned a petition signed by 24 of the 28 property owners receiving notice of the COA hearing supporting the application. He said only two residents opposed the variances.

The Board has reviewed relevant extracts from the planning documents, and is satisfied that the application meets the four tests of s. 45(1) of the *Planning Act*. The Subject Property is designated Residential Low Density 1 in the East Credit District Policies of the Mississauga Official Plan (OP) which permits detached and semi-detached residential units. The property is zoned "R4-20", which permits garages and their consequent driveways.

On the basis of the photographic evidence presented by Mr. Fahmy, it is clear that there are many driveways in the immediate area similar to the Applicant/Appellant's. The Board was informed that the majority of the homes they service were constructed at the same time as the Applicant/Appellant's, prior to the current ZBL. The Applicant/Appellant's application was an attempt to bring his driveway into conformity with the ZBL.

The Board finds that the variances requested are minor. There are many other driveways in the area similar in appearance to the Applicant/Appellant's. Allowing the existing driveway to remain as it is will have no impact on the streetscape, nor was there any evidence submitted that it will have any negative impact on any immediate neighbour.

The Board finds that the application is desirable for the appropriate development of the land. The existing driveway has been there in its current form for 15 years now. There is little to be gained from dismantling it at this point, especially considering other similar driveways in the area.

The Board Orders that the appeal is allowed and variances to By-law 0025-2007 are authorized.

So Orders the Board.

"S. J. Sutherland"

S. J. SUTHERLAND
MEMBER