

ISSUE DATE:

Jan. 20, 2011



PL100792

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: Dr. Young Nam Kim
Subject: Minor Variance
Variance from By-law No.: 0225-2007
Property Address/Description: 5994 River Grove Avenue
Municipality: City of Mississauga
Municipal File No.: A-235/10
OMB Case No.: PL100792
OMB File No.: PL100792

APPEARANCES:

Parties

Dr. Young Nam Kim
City of Mississauga

Counsel

E. Costello
Q. Annibale

DECISION DELIVERED BY JOE G. WONG AND ORDER OF THE BOARD

Background

Dr. Young Nam Kim (Applicant) is appealing a refusal by the City of Mississauga (City), Committee of Adjustment (File No. A235/10). The Applicant is seeking: "a minor variance to permit the operation of an orthodontic practice in a detached dwelling, such dwelling being the principle private residence of the orthodontist and is proposing to have three part time employees, whereas By-law 0225-2007, as amended permits a maximum of one employee." The Applicant owns the Subject Property, a detached dwelling located at 5994 River Grove Avenue which is zoned R4-7, Residential.

Evidence

At the outset of the hearing, Counsel for the City, advised the Board that the City has withdrawn its motion for an adjournment. The Board accepts their withdrawal of motion and is continuing with the hearing as scheduled.

Franco Romano a qualified land-use planner appeared on behalf of the Applicant. According to Mr. Romano, the Applicant, Dr. Kim is a resident dentist (orthodontist) who operates out of a custom built home that was designed with separate ground floor entrances for the orthodontic clinic and another for the residential area. The intent of the Applicant is to operate a highly efficient part-time practice (2.5 to 3 days) per week with three employees in various roles including receptionist, translator, hygienist and cleaner. That this is an alternative to having one resident dentist with one employee operating full time, five or more days per week.

Mr. Romano describes the subject dwelling as a two-storey with an integral garage and sufficient on-site parking and that it reinforces the residential appearance. The Subject Property is located next to an arterial road, Britannia Road with good access to transit. Mr. Romano submits the intent of the Official Plan (OP) is to ensure compatible built form as it relates to site design and development. According to Mr. Romano, the Subject Property conforms to and reinforces the surrounding residential use and therefore, it maintains the purpose and intent.

Mr. Romano testified the Subject Property is designated Residential Low Intensity II in the Mississauga Official Plan and this designation permits an accessory dental office in a private principle residence. In addition, he submits there is a level of flexibility in the application of the respective zoning by-law standards.

Jamie Bennett, a qualified land-use planner appeared on behalf of the City. Mr. Bennett testified that the subject house was purpose-built as an orthodontic clinic and with different architecture and materials from other homes in the neighbourhood. That it is set back further, has a three-car width driveway with a single car garage, the entrance is located at grade like a commercial building along with a prominent sign outside the front door. According to Mr. Bennett, Dr. Kim does not reside in the house but elsewhere in Mississauga with his family.

The evidence of Mr. Bennett is that the Applicant's orthodontist office contained six fully equipped dental chairs (four in the front, one in a private examination room, one in the x-ray room) and has 12 chairs in the waiting/reception area and this description was not challenged. According to Mr. Bennett, this is a significant sized dental office in terms of the facilities and level of equipment, which in turn generates significant patient and vehicular traffic.

In Mr. Bennett's opinion, the OP provisions are for small-scale commercial activity that does not detract from the residential characters of the homes and neighbourhood. Therefore, given the equipment and configuration of the Applicant's orthodontic office, this application does not fit with intent for a small-scale low intensity ancillary type of office. According to Mr. Bennett, the intent of the ZBL is to permit certain uses in detached homes that can accommodate live work uses but limits the scale and intensity of the use to maintain the residential character. The ZBL also requires that the dwelling to be the principal private residence of the medical practitioner and this not the case here.

Mr. Bennett submits the proposed variance would permit a use that is not an accessory office use but more like a commercial use, and more specifically like a medical office. Mr. Bennett contends that the effect of the variance would be to permit a "dental office" with the capacity for treating four or five patients at a time in a residential zone. A medical/dental office is not a permitted use in a residential zone.

According to Mr. Bennett, the on-site parking requirements have not met and without obtaining relief, this application is premature. Mr. Bennett suggests that the Applicant might more appropriately consider an Official Plan Amendment instead of a minor variance application.

Erin Kim, a neighbourhood resident, voiced her support for the orthodontic office use.

Disposition

In this instance, the Board prefers and agrees with evidence of Mr. Bennett. The configuration of the Applicant's orthodontic office in the subject dwelling with six dental chairs and a 12 chair waiting area is more like that of a dental practice than that of an ancillary professional office in a private residence. The Board finds that this office is configured with the expectation of a large and active dental practice and not as a home office.

The Applicant advised the Board that his intention is to have a more efficient part-time practice limited to three days per week but this still does not meet the intent of the ZBL to permit an ancillary small-scale professional office in a private residence and

not an office consisting of six full dental chairs and a waiting area for 12 with a total of four staff (including the resident dentist).

Increasing the permitted staff from one to three represents a 200% increase over the permitted standard and this is significant. The Board finds that increasing the staffing levels naturally increases the intensity of the enterprise. The Board finds that increasing staff levels here, means increasing the patient load (volume) and corresponding vehicular and pedestrian traffic to an office located in a private residence, in a residential neighbourhood to levels that were not intended by the ZBL for an ancillary home office.

The Board finds the proposed to increase the number of permitted employees from one (1) to three (3) does not maintain the intent of the ZBL, as the resulting orthodontic (dental) practice would be of a size and intensity that is not appropriate for a home office in a private residence located in a residential zone. The proposed variance results in the over-use of a home office. For all of the reasons discussed, the proposed variance does not meet the intent of the zoning by-law and is not appropriate.

Therefore, the Board having found that the proposed variance fails a least one of the four tests under subsection 45(1) of the *Planning Act*, there is no need to address the other remaining tests.

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

This is the Order of the Board.

“Joe G. Wong”

JOE G. WONG
MEMBER