

ISSUE DATE:

May 16, 2011



PL110096

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: Urszula Plaza
Subject: Minor Variance
Variance from By-law No.: 0225-2007
Property Address/Description: 63 Bonham Blvd.
Municipality: City of Mississauga
Municipal File No.: A-007/11
OMB Case No.: PL110096
OMB File No.: PL110096

APPEARANCES:

Parties

Urszula Plaza

Counsel

DECISION DELIVERED BY R. ROSSI ON MAY 3, 2011 AND ORDER OF THE BOARD

Urszula Plaza ("the Applicant"), who resides in the City of Mississauga, has requested a variance to permit a wider driveway at her place of residence at 63 Bonham Boulevard. She had previously constructed a widened driveway without a variance and is now seeking to regularize the existing driveway. Zoning By-law No. 0225-2007 permits a maximum width of 5.2 metres whereas the Applicants seek a driveway width of 6.3 metres.

Mrs. Plaza's husband attended the hearing with her. No one appeared in opposition and the City did not attend the hearing. The Applicant provided anecdotal information to the Board that in 2008, she called the City to ask whether she and her husband could widen their driveway from 5.2 metres to 6 metres. She asserted that the City official at the time confirmed that Mrs. Plaza could widen the driveway but that a strip of gravel should run along the driveway edge to shore up the edge from the small ditch running parallel to the driveway. The Applicant complied with the instruction and widened the driveway in the manner prescribed by the City.

In the Spring of 2009, responding to a complaint from a neighbour, a City inspector attended at the Applicant's property and explained that the gravel portion running the length of the driveway had increased the width from 6 metres to 6.3 metres. In March 2010, a by-law enforcement officer also visited the property in response to a complaint about the driveway width. Where the first officer had allegedly advised that the Applicant could widen her driveway as long as she did not touch the boulevard, this officer suggested she now apply for a permit to cut the curbs. The permit to cut the curbs was issued by the City the same day that the Applicant applied for it. A City work crew came to widen the curb and marked the curbs for cutting (see photos in Exhibit 1). The Applicant told the Board that the City's conflicting approach to the whole issue caused her concern and she sent the City crew away before they began to cut the curbs. Advised by the City to next seek a minor variance to regularize the driveway, the Applicant complied but the Committee of Adjustment ultimately denied the application. The Applicant filed this application with the Board. Besides her exhibit package, the Board accepted the Applicant's petition that, although not probative, indicates that a host of neighbours along the street support her request to regularize the existing driveway.

The Board reviewed the Applicant's package of documentation, which supports her contention that the City had provided varying and at times conflicting information to her as she made her decision to widen her driveway from 5.2 metres to 6 metres. The Board also recognizes that the gravel, which shores up the driveway from the ditch, increases the size of the overall area to 6.3 metres. However, set in the context of the existing character of the neighbourhood, the Applicant's driveway is in keeping with what already exists by comparison. The visual evidence revealed that a large house that sits only two houses away (separated from the Applicant's house by a complaining neighbour's house) in fact enjoys a much larger driveway that can easily accommodate three cars parked side by side. Visual evidence was presented to confirm this parking condition. Further, the Applicant and her husband measured all of the driveways on her street. The smallest of these, at 5.80 metres, already exceeds the zoning standard of 5.2 metres and in point of fact, all of the other driveways are 6 metres and above in width. Many, if not most, are in the range of 6.2 and 6.3 metres while the driveway belonging to the house across the street is approximately 7.2 metres wide.

The visual photos are highly persuasive of the neighbourhood's existing condition and the requested minor variance, set in the context of the existing zoning standard, which

virtually all of the surrounding properties exceed, is a minor one. The Applicant presented as much planning evidence as a lay person can muster at a proceeding such as this, and her evidence in this regard was persuasive to the Board that she is seeking a minor variance that regularizes an existing condition and that creates no adverse impacts on the immediate surrounding neighbourhood. The Board determines that the driveway width maintains the general intent and purpose of both the Official Plan and the Zoning By-law in the context of these planning instruments and when considered in the context of the remaining two tests, it is desirable to regularize the driveway condition for the appropriate development of the subject property and is minor as it creates no negative or adverse impacts on either the immediate or surrounding properties.

In the Board's determination, the requested variance meets all four tests as set out in Section 45(1) of the *Planning Act*. Having considered the uncontradicted evidence of the Applicant and the fact that neither the City nor any person attended these proceedings or appeared in opposition, the Board determines that the variance is minor and meets all of the four tests. Accordingly, the Board allows the appeal and authorizes the minor variance.

So orders the Board.

"R. Rossi"

R. ROSSI
MEMBER