

ISSUE DATE:

**Jul. 19, 2011**



PL110097

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: Anjum Begum, & Latafat Siddiqui  
Subject: Minor Variance  
Variance from By-law No.: 0225-2007  
Property Address/Description: 852 Preston Manor Drive  
Municipality: City of Mississauga  
Municipal File No.: A-006/11  
OMB Case No.: PL110097  
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**APPEARANCES:**

**Parties**

**Counsel**

L. Siddiqui

City of Mississauga

M. Taggart

**MEMORANDUM OF ORAL DECISION DELIVERED BY SUSAN B. CAMPBELL ON JUNE 30, 2011 AND ORDER OF THE BOARD**

L. Siddiqui (the "Appellant") applied to the Committee of Adjustment (the "COA") of the City of Mississauga (the "City") for a variance to the Zoning By-law (the "ZBL") to permit the existing basement entrance stairwell on his property at 852 Preston Manor Drive. Such a stairwell is expressly prohibited by the ZBL.

It was Mr. Siddiqui's evidence that the stairwell was installed in 2005 to access the basement of his house. He testified that the stairs are necessary to provide for an emergency exit for his wife who spends most of her time in the basement. He provided a doctor's note indicating that his wife has osteoarthritis and osteoporosis. He further testified that the basement is not used as an apartment. Mr. Siddiqui provided no land use planning evidence and did not address the four tests for the authorization of a variance set out in section 45(1) of the *Planning Act* (the "Act").

Counsel for the City called Erica Pallotta, a land use planner employed by the City to give evidence. Ms Pallotta was qualified by the Board to provide expert land use planning evidence. She reviewed the Report of the Planning and Building Department which she prepared for the COA on this matter (Exhibit # 3, TAB 5). The ZBL, in the General Provisions for Residential Zones, prohibits stairs, stairwells, and retaining walls which facilitate an entrance below grade to a dwelling. The purpose of this prohibition, Ms Pallotta testified, is to ensure that required side yards remain unencumbered. She also testified that the prohibition is in force as such entrance could facilitate the use of a basement apartment which is not permitted by the ZBL.

Ms Pallotta provided the Board with photographs (Exhibit # 3, TAB 6) which show that the side yard of the subject property is entirely obstructed by the stairwell, a fence and stored debris.

Ms Pallotta reviewed the four tests set out in section 45(1) of the Act. She referred to section 3.18.2.4 of the City's Official Plan (the "OP") which provides "building and site design will be compatible with site conditions, the surrounding context, features and surrounding landscape and the intended character of the area". In her opinion the stairwell is not compatible. It blocks the side yard and contains debris. In her opinion, the general intent and purpose of the OP is not met.

The Board accepts Ms Pallotta's uncontradicted opinion and finds that the variance requested does not meet the general intent and purpose of the OP. A stairwell which obstructs a required side yard and which is filled with debris is not compatible with the intended character of the neighbourhood.

Ms Pallotta next reviewed the provisions of the ZBL. In the zone in which the subject property is located only one dwelling is permitted on the property. Section 4.1.1.3 provides "a dwelling unit shall be located within a storey, but not below the first storey". A basement apartment is not permitted. Further, "yard" is defined in the ZBL as "any open, uncovered, unoccupied space appurtenant to a building". In her opinion a side yard is intended to separate dwelling units and to provide access to the rear yard. In the case at hand the side yard is entirely obstructed by the stairwell and debris.

In the opinion of Ms Pallotta the general intent and purpose of the ZBL are not met. The Board accepts her uncontradicted opinion and finds that the general intent and purpose of the ZBL are not met.

The Board accepts the evidence of Mr. Siddiqui that the basement of his house does not currently contain an apartment. However, the Board also heard from Doug Bell, the Supervisor of Compliance and Licensing for the City. He testified that in May 2010 the City received a complaint about a basement apartment at the subject property. With the owner's permission, the City inspected the basement and found that everything, except a stove, was in place for a basement apartment. Subsequently, after a Notice of Contravention was issued, the apartment fixtures were removed. The Board finds that while the basement may not currently be used as an apartment, the stairwell clearly facilitates the use of the basement as an apartment.

Ms Pallotta opined that the variance is neither minor nor desirable for the appropriate use of the land. There is an absolute prohibition in the ZBL on basement apartments; this stairwell facilitates the use of the basement as such an apartment. Therefore the variance is not minor. It is not desirable for the appropriate use of the land as it does not allow for required access to the rear yard, it prevents a separation between the properties and it facilitates the use of a basement apartment.

The Board accepts Ms Pallotta's uncontradicted opinion and finds that the variance is neither minor nor desirable for the appropriate use of the land. The stairwell blocks the side yard and access to the rear yard and it could facilitate the use of an illegal basement apartment.

The Board dismisses the appeal. The variance is NOT authorized.

This is the Order of the Board.

"Susan B. Campbell"

SUSAN B. CAMPBELL  
MEMBER