ISSUE DATE:

March 30, 2012

PL111316

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:	Joseph Do Joseph Do & Hoa Thi
Subject:	Minor Variance
Variance from By-law No.:	270-2004
Property Address/Description:	6 Royal Palm Drive
Municipality:	City of Brampton
Municipal File No.:	A11-254
OMB Case No.:	PL111316
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A P P E A R A N C E S :

Parties	**Agent**
Joseph Do and Hoa Thi Do	Joseph Do
City of Brampton	P. Cassata

MEMORADUM OF ORAL DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER ON MARCH 16, 2012, AND ORDER OF THE BOARD

Joseph Do and Hoa Thi Do own a home at 6 Royal Palm Drive in Brampton. Mr. and Mrs. Do have an extended family living in the home with them. Mr. Do paved the driveway to accommodate parking for the family cars. The basement of the home is used by his children. Mr. Do wished to secure an additional exit from the basement directly to the outside. He enlarged a basement window on the south side of the house and installed a door. He also built an exterior addition to form a large entry area for the basement access.

The work requires two variances from the zoning by-law:

1. An interior side yard setback of 0.46m to the addition for the basement entry where the by-law requires a minimum interior side yard setback of 1.2m; and

2. A driveway having a width of 7.77m where the by-law permits a driveway having a maximum width of 6.71m.

The requested variances were not authorized by the City of Brampton Committee of Adjustment. Mr. and Mrs. Do have appealed to this Board against that decision.

At the outset of the hearing, the Board was advised that Mr. Do would represent both himself and Mrs. Do, but that his English was challenged and he brought along a friend to assist in acting as an interpreter. The Board placed Ms. Thanh Nguyen under oath and confirmed that, while she is not a certified interpreter, she understood and agreed to translate faithfully for Mr. Do. The Board stressed the importance of not adding anything on her own, or otherwise embellishing either the questions to Mr. Do or his responses. Ms. Nguyen was clear that she would abide by this direction and, with occasional reminders from the Board, she did so.

Following the determination that Ms. Nguyen would translate for Mr. Do, the Board was advised that Mr. and Mrs. Do wished to amend their application for variances to delete the variance for the driveway. Having regard to subsection 45(18.1.1) of the *Planning Act* (Act), R.S.O. 1990, c. P.13, the Board finds that the amendment is minor and that no further notice is required.

Mr. Do testified that he built the addition in order to protect the entry to the basement from rain and water that might otherwise collect and seep into the basement. He emphasized that the work was done to create a desirable and safe environment for his extended family, particularly for those using the basement area. In this regard, Mr. Do was anxious that family members have a direct exit from the basement. Mr. Do called no planning evidence and did not address the requirements set out in subsection 45(1) of the Act.

The Board heard from Mr. Carmen Caruso, a full member of the Canadian Institute of Planners and a Registered Professional Planner in Ontario. He testified that the City of Brampton official plan designates the site as residential. The Heart Lake East secondary plan designates the site as low density residential. As such, the variance maintains the general intent and purpose of the official plan.

Mr. Caruso then reviewed the purpose for the side yard setback requirements, and noted four principal reasons:

1. Unimpeded access to the rear yard;
2. Room for building maintenance for the south side wall of the house;
3. Drainage to be kept on the subject site and not have roof drainage drop on to neighbouring properties; and
4. Emergency services access to the rear.

Reasons #1-3 might reasonably be accommodated by an easement agreement with a neighbour for occasional entry on to the neighbour's property. Unimpeded access for emergency services falls into a different category and must not be compromised, for the safety both of those living within the subject site and adjacent neighbours. In addition, Mr. Caruso noted that the north side of the house is already built much closer to the side yard, as is the neighbour's house to the north. Each is located approximately 0.6m from their respective side yard lot lines, leaving a maximum joint access of 1.2m. Although this joint access is governed by a reciprocal easement agreement, it is half the joint width required by the by-law: 1.2m on each side, resulting in a combined distance between structures of 2.4m. As such, the Board is not satisfied that the requested reduction would provide the necessary space for unimpeded emergency services access.

The issue in this case is the extension that has been built to protect the new side yard exterior entry to the basement. The issue is not the existence of the door itself.

The Board finds that the requested variance to reduce the side yard setback to accommodate the addition does not maintain the general intent and purpose of the zoning by-law, is not minor, and is not desirable for the appropriate use of the land.

The variance is not authorized.

So Orders the Board.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE-CHAIR