

ISSUE DATE:

July 10, 2012



PL120057

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: Hussain Yasin, Ingrid Yasin
Subject: Minor Variance
Variance from By-law No.: 0225-2007
Property Address/Description: 1028 Ceremonial Drive
Municipality: City of Mississauga
Municipal File No.: A 339/11
OMB Case No.: PL120057
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APPEARANCES:

Parties

City of Mississauga

Ingrid and Husain Yasin

Counsel

A. Wilson-Peebles
D. Koehn, Student-at-law

DECISION DELIVERED BY H. JACKSON AND ORDER OF THE BOARD

Introduction

This hearing was for an appeal by Ingrid and Husain Yasin ("Applicant/Appellants") of a City of Mississauga (City) Committee of Adjustment (COA) Decision, dated November 17, 2011, related to the Applicant/Appellants' request for variances to permit an over-sized driveway, and exterior stairs to the basement in the rear yard. The COA refused to authorize the variance related to the driveway, but did authorize the variance related to the stairwell entrance. The Applicant/Appellants appealed the COA decision, based on the refusal for the relief requested for the driveway. The requested relief for the exterior basement stairs is not in dispute.

Background

By-law officials were called to the Yasin property at 1028 Ceremonial Drive regarding a complaint about the rear stairwell entrance to the basement that had been constructed without a building permit and that rendered the home in contravention of the rear yard setback requirements of the zoning by-law. There are by-law provisions restricting direct entrance to the basement, the purpose of which is to discourage the development of a basement unit.

While the by-law officials were on the property, they also noticed that the driveway has been widened beyond the limits of the by-law provision. The Applicant/Appellants regularly park as many as 8 or 10 luxury automobiles in this widened driveway of their two storey Mississauga home.

The Applicant/Appellants were informed that if they wished to leave their back stairwell and driveway as is, they would require variances from the provisions of Zoning By-law 0225-2007.

Variances requested

The Applicant/Appellants request the following minor variances:

1. The existing basement entrance stairwell to remain in the rear yard proposing a rear yard of 6.32 m (20.73 ft.); whereas By-law 0225-2007, as amended, states that stairs, stairwells or retaining walls, to facilitate an entrance located below grade at any point, or to facilitate a direct entrance only to the basement, shall not be permitted in front yards, interior side yards, exterior side yards and required rear yards in this instance and would require a minimum rear yard of 7.50 m (24.60 ft.) in this instance;
2. The existing driveway to remain having an overall width of 9.50 m (31.16 ft.); whereas By-law 0225-2007, as amended, permits a maximum driveway width of 8.06 m (27.88 ft.) in this instance.

The COA refused their application for the variance related to the driveway, but allowed the variance related to the stairwell entrance. The refusal for the relief for the driveway lead to this appeal.

Issue

Subsection 45(1) of the *Planning Act* allows the Board to authorize variances to a zoning by-law where the variance is minor; is desirable for the appropriate development or use of the land, building or structure; maintains the general intent and purpose of the official plan; and maintains the general intent and purpose of the zoning by-law. If the variance fails even one of those tests, it must be refused.

Evidence and findings

The Applicant/Appellants were self-represented. Mr. Yasin explained that he and his wife have lived in the subject property for about 20 years. He undertook construction of the driveway and basement stairwell entrance about 17 years ago. He did not obtain a building permit, however, he testified that City officials had visited his site previously and has said that “all was fine”. Mr. Yasin testified that he has grown children and that his entire family are car enthusiasts. They have numerous luxury automobiles that they park in the driveway, and they change vehicles often.

Mr. F. Romano was qualified by the Board to give expert opinion evidence on land use planning. He advised the Board that the City would not contest the rear yard setback minor variance related to the exterior stairwell. He advised the Board that it was his opinion that the rear yard basement entrance meet the general intent and purpose of the official plan, as the basement entrance maintains and enhances the dwelling. The general intent and purpose of the zoning by-law is to ensure that the single family detached character and function of the dwelling is maintained by the home. He testified that this is the case, and that the rear entrance does not interfere with the rear yard amenity space, and that the use is appropriate. It was his opinion that the variance for the rear entrance is minor and has no adverse impact.

However, Mr. Romano said that the City was opposed to the request for a variance from the maximum driveway width provisions of the by-law. It is his opinion that the requested variance for the driveway fails all four of the *Planning Act* tests.

He testified that the general intent and purpose of the City official plan is to ensure that the site design is compatible with the surrounding context and that it contributes in a respectful manner with the continuity of the streetscape with minimum clutter. In his

opinion, the official plan is not satisfied because the excessively wide driveway invites an inordinate amount of visual clutter in the front yard and streetscape. The location is in a gateway position and the current condition detracts from the orderly residential character and contributes negatively to the residential streetscape.

The general intent and purpose of a zoning by-law is to define performance standards. In this instance, the by-law states that in order to conform to City policy as set down in the official plan, the driveway may not exceed 8.06 m in width. Mr. Romano testified that the general intent and purpose of the driveway width restrictions in the zoning by-law is three-fold:

- That the driveway not dominate or become the dominant feature in the front yard.
- To ensure that there is a maximum amount of front yard landscaping, to contribute to the appearance and character of the surrounding area.
- That the front yard does not result in a parking lot or an area where vehicles are stored in excess numbers, that is not in keeping with a single detached home.

Mr. Romano testified that the general intent and purpose of the zoning by-law is not maintained by the current driveway, or a driveway at 9.5 m (as requested by the variance), as the driveway then becomes a dominant characteristic of the lot, it contributes to a significant reduction in front yard landscaping, and it results in an excessive number of vehicles being parked in the front yard.

Mr. Romano testified that the proposal fails the test for desirable, as a wide driveway helps facilitate an excessive front yard parking area, which is cluttered and incompatible with the surrounding residential area. It is not in keeping with the existing area and is excessive for the lot size and configuration.

Finally, it is Mr. Romano's opinion evidence that the requested variance is not minor. The driveway as it exists is significantly larger than the by-law permits. The variance to permit a 9.5 m wide driveway is neither minor numerically nor is it minor in impact on the surrounding properties. It will allow the Yasin family to continue to park many more cars in front of their home on what has been characterized as a semi-permanent basis, than would seem to the Board to be at all reasonable. The neighbor from across the

street, Mr. Rob Nicholson, spoke in opposition to the variance for the driveway, stating that the parking of numerous cars on the Yasin's front driveway had an adverse impact on his enjoyment of his property.

Mr. Romano's opinion evidence was not opposed.

Decision and order

The driveway, at 9.5 m width, will continue to dominate the front of the lot, and is not compatible with the surrounding area. As such, the Board finds that the variance request does not meet the intent and purpose of either the official plan or the zoning by-law. At 9.5 m, the variance is not minor and produces a situation that is not desirable for the area. After consideration of the evidence of both Mr. Romano and Mr. Yasin as well as the submission of counsel for the City, the Board finds that the requested minor variance for the driveway fails all four tests of subsection 45(1) of the *Planning Act*.

The Board dismisses the appeal against the maximum driveway width provisions of the By-law 0225-2007. The requested minor variance is not authorized.

The Board Orders the appeal is allowed in part and authorizes the requested minor variance to the rear yard setback provisions of the By-law 0225-2007 for the exterior stairwell to the basement.

So Orders the Board.

"H. Jackson"

H. JACKSON
MEMBER