

ISSUE DATE:

**September 10, 2013**



PL120461

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: Rai Amandeep, Sarabjit Khattrra  
Subject: Minor Variance  
Variance from By-law No.: 22-90  
Property Address/Description: 287 County Road  
Municipality: Town of Orangeville  
Municipal File No.: A5/12  
OMB Case No.: PL120461  
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**APPEARANCES:**

**Parties**

Hamanjit Khattrra

Geoffrey Mullins

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. P. ATCHESON ON  
AUGUST 29, 2013 AND ORDER OF THE BOARD**

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[1] This was the third hearing event scheduled in the matter of an appeal by Rai Amandeep, Hamanjit Khattrra and Sarabjit Khattrra (the "Appellants") from a decision of the Committee of Adjustment of the Corporation of the Town of Orangeville (File A5/12) that refused to authorize a minor variance for a property known municipally as 287 County Road 16 being Part of Lot 3, Concession 3. The variance is from Zoning By-law No. 22-90 of the Town of Orangeville and is required to permit the parking of a tractor trailer on the property. The Appellants are proposing to use the tractor trailer for storage space.

## BACKGROUND AND EVIDENCE

[2] The subject property is located on the east side of County Road 16 known locally as Veteran's Way, north of Hansen Boulevard. A single family dwelling currently exists on the property. Large single family homes abut the subject property to the north and south. A former gravel pit abuts the property to the east. The lands are designated "Estate Residential" by the Town of Orangeville's Official Plan ("OP") the lands are zoned Development (D) zone by By-law 22-90. The property, while zoned development, is treated as a residential property as the property currently contains a large single family home. A home occupation is permitted use in the dwelling on the property within the Development (D) zone. The Appellant runs a taxi dispatch service from the home.

[3] By-law No. 22-90 prohibits the storage of a truck trailer on a residential property. These facts are set out in the town planner's report and the appeal application in the Board's file.

[4] The Board, at the commencement of the hearing, noted that the Appellant, Mr. Hamanjit Khattria, was not represented by Counsel and did not intend to call any professional planning evidence, and was not prepared to proceed. He requested an adjournment on the basis that a friend was not available to assist at this time. He admits that his friend is not legal counsel or a professional planner and had not prepared any evidence upon which the Board might rely.

[5] The Board explained to the parties that this is a new hearing and that in considering an appeal for a minor variance, the Board was required to judge the appeal based upon the four tests set out in s. 45 (1) of the *Planning Act* ("Act") and that the onus to prove that all four tests were met, is the obligation of the Appellant in this case.

[6] The Board, for the purpose of the convenience of the reader of this decision, will reproduce the four tests as set out in s. 45 (1) of the Act which states:

### Powers of Committee

45.(1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is

desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained. R.S.O. 1990, c. P.13, s. 45 (1); 2006, c. 23, s. 18 (1); 2009, c. 33, Sched. 21, s. 10 (11).

[7] Mr. Mullins, a neighbour who appeared at the Committee of Adjustment and supports the Committee's decision, was present and indicated that he was ready to proceed. He submits to the Board the actions of the Appellant are for the purpose of delay as this is the third time that they have been not ready or willing to proceed. The Board, on two previous occasions, granted the Appellant adjournments.

[8] The Board, at a hearing scheduled for October 15, 2012, granted Mr. Khattrra an adjournment at that time to allow him to retain legal counsel to assist him in his appeal.

[9] Mr. Khattrra, on questioning from the Board, freely admitted that he had not retained legal counsel, had not prepared any evidence to support his application, and had not sought an adjournment of the hearing as set out in the Board's *Rules of Practice and Procedure*. He advised the Board that he was not prepared to proceed at this time. On continued questioning from the Board, he could or would not provide any compelling reasons for the delay other than a friend was not available to be with him.

[10] The Board noted to Mr. Khattrra that the Board's Rules regarding adjournment were clearly set out in the notice of this hearing, Exhibit 1, which was sent to him establishing this hearing date and that he has had since last October to retain or seek the advice of counsel which was the reason the last adjournment was granted by the Board.

[11] Mr. Khattrra, acknowledged being aware of the hearing date set out in the Board's notice of hearing and for reasons best known to him has flagrantly ignored these Rules.

[12] The Board, for the benefit of the reader, will reproduce the applicable Rules regarding adjournments.

## **ADJOURNMENTS**

**61. Hearing Dates Fixed** Hearing events will take place on the date set unless the Board agrees to an adjournment.

**62. Requests for Adjournment if All Parties Consent** If all of the parties agree, they may make a written request to adjourn a hearing event. The request must include

the reasons, a suggested new date, and the signed consents of all parties. However, the Board may require that the parties attend in person or convene an electronic hearing to request an adjournment, even if all of the parties consent.

**63. Requests for Adjournment Without Consent** If a party objects to an adjournment request, the party requesting the adjournment must bring a motion at least 10 days before the date set for the hearing event. If the reason for an adjournment arises less than 10 days before the date set for the hearing event, the party must give notice of the request to the Board and to the other parties and serve their motion materials as soon as possible. If the Board refuses to consider a late request, any motion for adjournment must be made in person, at the beginning of the hearing event.

**64. Emergencies Only** The Board will grant last minute adjournments only for unavoidable emergencies, such as illnesses, so close to the hearing date that another representative or witnesses cannot be obtained. The Board must be informed of these emergencies as soon as possible.

**65. Powers of the Board upon Adjournment Request** The Board may,

- (a) grant the request;
- (b) grant the request and fix a new date or, where appropriate, the Board will schedule a prehearing conference on the status of the matter;
- (c) grant a shorter adjournment than requested;
- (d) deny the request, even if all parties have consented;
- (e) direct that the hearing proceed as scheduled but with a different witness, or evidence on another issue;
- (f) grant an indefinite adjournment, if the request is made by the applicant or proponent and is accepted by the Board as reasonable and the Board finds no substantial prejudice to the other parties or to the Board's schedule. In this case the applicant or proponent must make a request that the hearing be rescheduled;
- (g) convert the scheduled date to a mediation or prehearing conference; or
- (h) make any other appropriate order.

[13] The Board, after considering the submissions of the Appellant, must conclude that he either unwittingly, or by design, and on more than one occasion, has ignored the directions and the Rules of the Board. He has had since October of 2012 time to hire Counsel to assist him. This was the reason for the last adjournment. He freely admits that he has taken no action to seek legal assistance, nor has he made any effort to be able to proceed with his appeal.

[14] Board hearings are serious matters. They are costly, not only to the parties, but to the general public and the Board's calendar and should be undertaken in an efficient and timely fashion. The Appellant's actions to date are a flagrant abuse of the appeal rights granted to him by the *Planning Act*. The Appellants have continued to ignore the directions and Rules of the Board. The Board heard no compelling reasons from Mr. Khattrra that would lead this panel of the Board to conclude that a further adjournment is

warranted. It is equally clear that Mr. Khattrra is unprepared to provide any testimony in support of his appeal.

[15] The Board concludes that the actions of the Appellant, since the inception of the appeal, have been for the sole purpose of delay and should not be tolerated any further.

[16] The Board, based upon this conclusion and in accordance with the authority granted under Rule 65 (h) of the Board's *Rules of Practice and Procedure*, will dismiss the appeal.

### **ORDERS**

[17] The Board orders that the appeal by Rai Amandeep, Hamanjit Khattrra and Sarabjit Khattrra from the decision of the Committee of Adjustment for the Town of Orangeville (File A5/12) is dismissed and the variance is not authorized.

"J. P. ATCHESON"

J. P. ATCHESON  
MEMBER