

ISSUE DATE:

November 27, 2012



PL120912

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:	Percy Fernando
Subject:	Minor Variance
Variance from By-law No.:	6593
Property Address/Description:	34 Delbrook Court
Municipality:	City of Hamilton
Municipal File No.:	A-133/12
OMB Case No.:	PL120912
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APPEARANCES:

Parties

Percy & Lydia Fernando

**MEMORANDUM OF ORAL DECISION DELIVERED BY J. de P. SEABORN ON
NOVEMBER 13, 2012 AND ORDER OF THE BOARD**

INTRODUCTION

[1] The matter before the Board is an appeal by Percy & Lydia Fernando (“Applicants”) from a decision made by the Committee of Adjustment (“Committee”) for the City of Hamilton (“City”). The Applicants sought variances from Zoning By-law No. 6593 (“By-law”) to allow them to renovate their basement to add habitable living space. The renovation would result in non-compliance with the By-law in respect of technical parking standards.

[2] At the outset of the hearing the Applicants advised they had reached an agreement with the City. The City planner and legal Counsel attended as observers, indicating that they were not appearing to oppose the relief sought and should not be listed as appearing. .

EVIDENCE

[3] Ms. Percy testified in support of the variances. The Applicants live in a single family home in a residential area of the City. They wish to renovate their basement to add additional bedrooms and a kitchen and living area. The intention is not to rent out the rooms. They will be used for their sons, one of whom is attending University and living at home and their parents, whom they hope can relocate to Hamilton. The original plans showed the renovation would result in eight habitable rooms, which would require under the By-law six parking spaces. Ms. Percy explained that she met with the City and has revised the plans to show six habitable rooms, which would require five parking spaces under the By-law. There are four parking spaces on site, so a variance is still required even with the reduction in living space.

[4] The City does not oppose the application. In light of the change in plans (Exhibit 2), the application is amended. I find that the amendment is minor and therefore no notice of the application, as amended is required. The test for whether a minor variance from a by-law can be authorized is set out in s. 45(1) of the *Planning Act*. Based on the evidence given and the position of the City that it is not opposed to the appeal, I find that the variances sought (Exhibit 3) should be authorized. Individually and collectively they are appropriate for the development and use of the land and building, the general intent and purpose of the by-law and the official plan are maintained and they are minor in impact. The Applicant's home may only be used as a single family dwelling and there is no intention, following the renovation, to convert or use the home as a two dwelling family unit.

ORDER

[5] The Board orders that the appeal is allowed and the requested variances are authorized to permit the interior alteration of the cellar to contain additional habitable rooms for the existing single family dwelling notwithstanding that:

1. Four (4) parking spaces shall be provided instead of the minimum required five (5) parking spaces;

2. A 0.0 m manoeuvring space aisle width shall be provided for the two (2) parking spaces located on the driveway instead of the minimum required 6.0 m manoeuvring space aisle width;
3. No on-site manoeuvring space aisle shall be provided for the two (2) parking spaces within the driveway instead of the manoeuvring space being provided only on the lot on which the principle use, building and structure is located;
4. Two of the required parking spaces shall be located within the front yard instead of the requirement that, for a single family dwelling, only one of the required parking spaces may be located within the front yard;
5. The accessibility to two (2) of the required parking spaces in the attached garage shall be obstructed by the two (2) required parking spaces located in the driveway instead of the requirement that only the accessibility to one of the required spaces may be obstructed by any other required parking space for a single family dwelling; and
6. The manoeuvring space for the parking spaces in the attached garage may be obstructed by the parking spaces in driveway instead of the requirement that all manoeuvring space shall be maintained free and clear of all obstructions to permit unobstructed access to and egress from required parking spaces.

“J. de P. Seaborn”

J. de P. SEABORN
VICE CHAIR