

ISSUE DATE:

May 24, 2013



PL130327

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

Appellant:	Harold Stephen
Applicant:	Kamal Jolly, Shivinder Jolly
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	1390 Watersedge Road
Municipality:	City of Mississauga
Municipal File No.:	A074/13
OMB Case No.:	PL130327
OMB File No.:	PL130327

APPEARANCES:

Parties

Kamal Jolly

Harold Stephen

MEMORANDUM OF ORAL DECISION DELIVERED BY J.V. ZUIDEMA ON MAY 9, 2013 AND ORDER OF THE BOARD

[1] A telephone conference call (“TCC”) was held to address a settlement achieved between the parties on this minor variance appeal. The background in summary is that Kamal and Shivinder Jolly (“the Applicants”) applied for and were granted relief against the City of Mississauga’s (“the City”) Zoning By-law 0225-2007 in order to construct a new two storey dwelling fronting on the shore of Lake Ontario for their property located at 1390 Watersedge Road (“the subject property”). The Applicants were granted four variances as follows:

1. an encroachment into the front yard of 1.94 m (6.36 ft.); whereas By-law 0225-2007, as amended, permits a maximum encroachment of 1.60 m (5.24 ft.) into the front yard;
2. a combined width of side yards of 7.46 m (24.47 ft.); whereas By-law 0225-2007, as amended, requires a minimum combined width of side yards of 27% of the lot width or 8.68 m (28.47 ft.);
3. an eave height of 7.04 m (23.09 ft.); whereas By-law 0225-2007, as amended, permits a maximum eave height of 6.40 m (20.99 ft.);
4. a gross floor area - infill residential of 704.16 m² (7,579.76 sq. ft.); whereas By-law 0225-2007, as amended, permits a maximum gross floor area - infill residential of 190 m² plus 0.20 times the lot area or 646.46 m² (6,980.19 sq. ft.).

[2] Harold Stephen ("the Appellant") appealed to this Board citing the following reasons from his appeal letter:

1. The basis of a need for relief from the by-law begins entirely with the desire of the owners to have a much larger house than permitted by the by-law. The variances would allow a house in stark contrast with the size and impact of houses in the neighbourhood, and would be out of character with the neighbourhood. The proposed house would loom over the neighbourhood. It would be a blot on the lakeshore and would diminish the other residents' enjoyment of their properties. This would likely reduce the economic value of their homes.
2. The Committee of Adjustment erred in not giving sufficient weight to the submission of the Planning and Building Department of the City of Mississauga.
3. The views of local councillor, Pat Mullin, which were relied on, in part, by the Committee, were not fully formed by the facts.
4. The plans show this house as well forward of the adjacent home at 1400 Watersedge Road and almost totally in front of its other neighbour. It would

- be more sympathetic to the character of the neighbourhood were an elevation of such mass moved deeper into the lot, where, with an average depth of over 200 ft. it could be readily accommodated.
5. The building with a present elevation over 76 ft. in length can be readily modified to fit the bylaw requirements for side yards. A slight modification to rotate the house footprint to be closer to parallel to the south lot line would be easily accomplished and more in keeping with the orientation of adjacent houses and assist in diminishing the scale aspect on the street.
 6. This house, at 76 ft. long and with a height to the top of roof of 31 ft. above average grade, presents a massive change from the character of the neighbourhood and a very large negative impact on the streetscape. The claim from the applicant that the dwelling has been designed to minimize the dwelling mass is belied by the predominance of the front elevation, which can only be described as massive.
 7. The Planning and Building report suggested that the owners reduce the size of the dwelling to more appropriately meet the infill exception requirements and maintain the intended character of the area. The owners asked for the amendment to address the space requirements of the family and their entertainment needs; this for a house which can be 7,000 sq. ft. and which also has several thousand finished sq. ft. in an over 9.0 ft. high floor below grade with walkout sliding glass doors.
 8. The substantial changes to set-backs, side-yards, height and area, permitted by the variances are not minor, Accepting or agreeing to such variances, bring the rule of law into disrepute, and casts a shadow on the integrity of process. In addition, a reasonable person would deem a 6,980.19 sq. ft. house more than adequate for a single family dwelling.

[3] The parties worked in earnest to resolve their dispute and presented a joint position for the Board's consideration. Three of the four variances were deleted and only one remained, the one for the eave; and that relief was also reduced from 7.04 m to 6.74 m.

[4] The Board was satisfied that the amendments to the original application were minor and that no further notice would be required. The Board relied on the unrefuted professional planning evidence provided to support the settlement. An affidavit was filed by Ted Davidson, professional land use planner. He opined that the one amended variance met the requisite four tests and complied with relevant provincial policy.

[5] The Board accepted and relied upon this unchallenged evidence in order to provide an Order in accordance with the settlement. For ease of reference, the Minutes of Settlement are attached to this decision and marked as "Attachment 1."

[6] The subject property is located within the Clarkson/Lorne district in the City and is designated "Residential Low Density I." The proposal does not change the use and as such meets the intent and purpose of the City's Official Plan.

[7] The site is zoned "R1-2" which sets the maximum height of eaves at 6.4 m. The relief sought here for 6.74 m represents a modest increase in order to achieve the proposed new construction. Given that the area is undergoing rejuvenation, such modest changes do not detract from what exists in the area and therefore meets the intent and purpose of the zoning by-law.

[8] Concerning tests three and four, minor and desirable, I find that the one amended variance sought meets these two tests as well. The proposed development represents infill which is encouraged through provincial policy but it does so harmoniously in keeping with the surrounding neighbourhood. It also represents reinvestment in the area which is desirable.

[9] The Board congratulates the parties in achieving this settlement.

ORDER

[10] Therefore the Board orders that the amended application is minor and no further notice is required pursuant to ss. 45(18.1.1) of the *Planning Act*.

[11] The Board orders that the appeal is allowed in part in order to effect the settlement achieved and the following amended variance is authorized:

An eave height of 6.74 m (22.1 ft.); whereas By-law 0225-2007, as amended, permits a maximum eave height of 6.40 m (20.99 ft.).

[12] In all other respects, the appeal is dismissed. The Minutes of Settlement are appended as Attachment 1.

“J. V. Zuidema”

J.V. ZUIDEMA
VICE-CHAIR

ATTACHMENT 1

**ENVIRONMENT AND LAND TRIBUNALS ONTARIO
ONTARIO MUNICIPAL BOARD**

**IN THE MATTER OF SUBSECTION 34(11) of the *Planning Act*, R.S.O. 1990,
c.P.13, as amended**

Applicant and Appellant:	Harold (Hap) Stephen
Subject:	Appeal of Committee of Adjustment
Property Description:	Lot 19, Plan 802; Mississauga
Municipal Address:	1390 Watersedge Rd, Mississauga
Municipality:	Peel
Municipal File No.:	Committee of Adjustment # A74/13
OMB Case No.	PL130327
OMB File No.	PL130327

B E T W E E N:

HAROLD (HAP) STEPHEN, an individual residing at 1383 Watersedge Rd., Mississauga

("Stephen")

- and -

Kamal and Shivinder Jolly, individuals residing in Mississauga,

(collectively, "Jollys")

RECITALS:

- A. Jollys own the property located at 1390 Watersedge Rd., Mississauga, Ontario (the "Subject Property").
- B. Jollys wish to construct a new dwelling on the Subject Property.
- C. Jollys applied to the Committee of Adjustment (File A74/13) for several minor variances relating to the construction of a new house on the Subject Property;
- D. On February 28, 2013, the Committee of Adjustment approved the Jollys application for the minor variances requested.
- E. On March 21, 2013, Stephen filed an appeal of the Committee of Adjustment with the Ontario Municipal Board ("the OMB").

- F. The parties hereto have come to a mutual agreement to settle the matter relating to the variances and the OMB appeal.

NOW THEREFORE in consideration of the mutual covenants contained herein and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

1. OMB Appeal

Stephen hereby agrees to participate in a conference call (to be held as soon as such call can be scheduled by the OMB) with the OMB to allow the OMB to approve this Settlement Agreement and issue an order or ruling reflecting the terms of this agreement. Stephen agrees to undertake all necessary actions and execute any and all such documents forthwith as may be required by the Committee of Adjustment and/or the OMB to allow approval of this Settlement Agreement.

2. Revisions to Site Plan

The Jollys agree that they shall revise the site plan application and subsequently the building permit application to ensure that the house to be constructed on the Subject Property complies with the requirements of site plan and the zoning by-laws. The Jollys hereby agree to withdraw their application for the following 3 variances which were requested from the Committee of Adjustment such that these variances will not be relied upon by the Jollys for approval of site plan.:

- (a) An encroachment into the front yard of 1.94m (6.36 ft) whereas the By-law 0225-2007 as amended permits a maximum encroachment of 1.60m (5.24ft) into the front yard in this instance;
- (b) A combined width of side yards of 7.46m (24.47 ft) whereas the By-law 0225-2007 as amended permits a minimum combined side yards of 27% of the lot width or 8.68m (28.47 ft) in this instance;
- (c) A gross floor area – infill residential of 704.16m squared (7,579.76 ft); whereas the By-law 0225-2007 as amended permits a maximum gross floor area – infill residential of 190m squared plus .20 times the lot area of 648.46m squared (6,980.19 sq ft) in this instance.

3. Eave Height

Stephen hereby consents to the Jollys constructing a dwelling on the subject property such that the eave height at the rear of the property is permitted to be 6.74m (22.11ft.) whereas a maximum eave height of 6.40m (20.99ft.) is permitted by the zoning by-laws. The Jollys affirm that the overall height of the dwelling complies with the by-laws.

4. **Further Assurances**

Each of the parties hereto shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other party hereto may reasonably require from time to time for the purpose of giving effect to this assignment and shall use its best efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this agreement.

5. **Enurement**

This agreement shall enure to the benefit of and be binding upon the parties hereto and their successors and assigns, respectively.

6. **Governing Law**

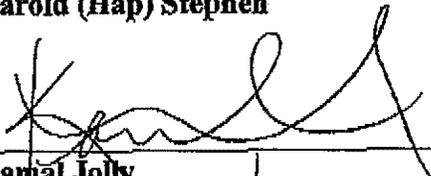
This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

8. Time is of the Essence.

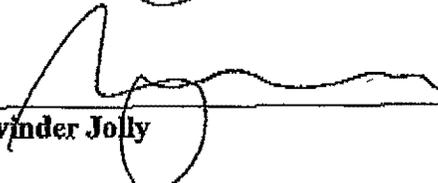
IN WITNESS WHEREOF the parties hereto have executed this agreement as of April 25 2013.



Harold (Hap) Stephen



Kamal Jolly



Shivinder Jolly