

ISSUE DATE:

**August 20, 2013**



PL130549

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:	Sufian Ahmed
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	4454 Credit Pointe Drive
Municipality:	City of Mississauga
Municipal File No.:	A 068/13
OMB Case No.:	PL130549
OMB File No.:	PL130549

**APPEARANCES:**

**Party**

**Representative**

Sufian Ahmed

Himself

**MEMORANDUM OF ORAL DECISION DELIVERED BY JAMES R. McKENZIE  
ON AUGUST 6, 2013 AND ORDER OF THE BOARD**

---

[1] Sufian Ahmed ("Applicant/Appellant") owns 4454 Credit Pointe Drive ("subject property") in the City of Mississauga. He applied for and was refused minor variances from the City's Committee of Adjustment that would have provided relief from provisions in Zoning By-law No. 0225-2007, as amended, to maintain an existing circular driveway that is wider than permitted. He appealed the Committee's decision pursuant to s. 45(12) of the *Planning Act*.

[2] Mr. Ahmed appeared and testified on his own behalf. He was accompanied by his designer, Mark Marino, who also testified. No one from the City appeared at the Board's hearing, nor did anyone appear from the neighbourhood in which the subject property is located. As the only two attending the hearing, Messrs. Ahmed and Marino testified as a panel.

[3] The subject property is designated *Low Density Residential I* in the Official Plan and zoned *R1-11, Residential* in By-law No. 0225-2007, as amended.

[4] Before addressing Mr. Ahmed's and Mr. Marino's evidence, some background is first necessary to make clear what was before the Board on appeal.

[5] The Committee of Adjustment public notice stated:

The applicants [Mr. Ahmed and his wife] request the Committee to authorize a minor variance to permit the existing driveway to remain having:

1. an area of the circular driveway in one yard of 136.18m<sup>2</sup> (1,465.87 sq. ft.); whereas By-law 0225-2007, as amended, permits a maximum area of circular driveway located in one yard of 50% of the yard in which it is located (or 82.24m<sup>2</sup>/885.25 sq. ft.) in this instance;
2. a combined width of the two points of access of a circular driveway of 15.85m (52.00 ft.); whereas By-law 0225-2007, as amended, permits a maximum width of two points of access of a circular driveway of 8.50m (27.88 ft.) in this instance; and,
3. a driveway width of 15.85m (52.00 ft.); whereas, By-law 0225-2007, as amended, permits a maximum driveway width of 8.50m (27.88 ft.) in this instance.

[6] In response to that notice, the City's planning department prepared a comment to the Committee of Adjustment that stated:

...it appears variance #1 and #2 are not required. Furthermore, we note that variance #3 should be amended as follows: "a driveway width of 21.16m (69.42 ft.); whereas By-law 0225-2007, as amended, permits a maximum width of 8.5m (27.88 ft.) in this instance."

[7] At its hearing of the application, the Committee of Adjustment amended the application to remove the first two variances and modify the third in accordance with the planning department comment. The Committee then refused the third variance.

[8] Mr. Ahmed testified that he and his wife entered into an agreement to purchase the subject property in November 2011, with a closing date in May 2012. He told the Board that prior to closing and taking possession, he applied to the City's transportation and engineering department for permission to construct a circular driveway. That application was approved, and made conditional upon his paying fees to the City of \$830 for a curb-cut, \$682 for the removal of a tree from the public boulevard, and \$430 to plant a replacement tree. Those costs were in addition to the \$36,000 he then paid in June 2012, to replace the original standard-paved driveway with a circular driveway surfaced with decorative stone. At no time, said Mr. Ahmed, did the staff of the transportation and engineering department advise or alert him about the subject of zoning compliance.

[9] Mr. Ahmed told the Board that his troubles began in August 2012, when he received a letter from the City's building department advising him that the driveway as constructed did not comply with By-law No. 0225-2007, as amended. The letter, resulting from a site inspection by a by-law enforcement officer, set out a choice between complying or applying for a minor variance.

[10] Mr. Ahmed and Mr. Marino testified that they met with the local council member, Ron Starr, for the ward in which the subject property is located in order discuss revisions to the driveway and front yard condition so as to secure his support. Through a series of revisions, they told the Board that Mr. Starr's support was procured, and they filed two documents in connection therewith. Exhibit 3 is a revised front yard plan reflecting increased side yard landscaping and an increased landscaped island within the circular driveway that ties-in with the public boulevard, and Exhibit 4 is an e-mail correspondence sent to Mr. Ahmed from Mr. Starr stating,

After reviewing your latest revisions and intentions to reduce the hard surface areas, move the entrance posts and provide more landscaping, I am satisfied these changes [reflected in Exhibit 3] will generally satisfy the overall intent of good neighbourhood planning.

[11] Mr. Ahmed and Mr. Marino also told the Board about two other properties very close to the subject property—4442 and 4466 Credit Pointe Drive—that each maintain a circular driveway. They are situated on the same side of the street as the subject property. Photographs entered as Exhibits 6 and 7 confirm that they are virtually identical to the driveway Mr. Ahmed installed. Finally, Mr. Ahmed directed the Board to a document that nine of his closest neighbours signed and delivered to the Committee of Adjustment stating that they have no objection to the existing driveway being legalised.

[12] To authorize a variance, s. 45(1) of the *Planning Act* stipulates that the variance must: be minor, be desirable for the appropriate development of the lands in question, maintain the intent and purpose of the zoning by-law; and, maintain the intent and purpose, if any, of the municipality's official plan. From the evidence of Messrs. Ahmed and Marino, and from the public record materials provided to the Board from the Committee of Adjustment as required under the *Planning Act*, including the comment prepared by the City's planning department, the Board makes the following findings with respect to those tests.

[13] The intent of the provisions of By-law No. 0225-2007, as amended, restricting driveway widths is to maximize opportunities for front yard landscaping and minimize the effects of hard surface areas on the streetscape. Mr. Ahmed and Mr. Marino have developed a revised front yard condition that increases landscaping to screen that portion of the circular driveway between the house and street, thus mitigating the visual impact of the circular driveway on the streetscape. The Board finds, therefore, that the intent noted above will be maintained. The Board also finds, by the presence of other circular driveways existing on Credit Pointe Drive and by neighbourhood acceptance of the existing driveway—evidenced by the supportive correspondence of neighbours to the Committee of Adjustment and by the absence of any dissenting views at both its public hearing and this appeal hearing—that the relief sought is both minor and desirable for the appropriate development of the subject property. Approval of this variance will not establish a precedent because circular driveways already exist on the Credit Pointe Drive. Finally, the Board finds that the nature of the relief sought relating to a driveway’s width is not something to which the City’s official plan is directed. This final test, therefore, is not applicable in these circumstances.

**ORDER**

[14] The Board orders that the appeal is allowed and a minor variance is authorized to maintain the 21.16 m width for the existing circular driveway on the subject property. The Board’s authorization will be conditional upon the implementation of the modifications to the driveway set out on Exhibit 3.

“James R. McKenzie”

JAMES R. MCKENZIE  
VICE-CHAIR