

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 6, 2015

CASE NO(S): PL140453

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Djoe Siek
Applicant:	Rizwan Alam and Taha Aziz
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	5449 Bestview Way
Municipality:	City of Mississauga
Municipal File No.:	A 114/14
OMB Case No.:	PL140453
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Heard: November 4, 2014 in Toronto, Ontario

APPEARANCES:

<u>Party</u>	<u>Counsel*/ Representative</u>
City of Mississauga	Iqra Khalid (Student at law)
Siek Djoe	James Kay*
Rizwan Alam	Self-represented

DECISION DELIVERED BY H. JACKSON AND ORDER OF THE BOARD

[1] Rizwan Alam (the “Applicant”) applied for minor variances to permit the existing accessory structure (a shed) to remain in the side yard of his property at 5449 Bestview Way. The City of Mississauga (the “City”) Committee of Adjustment (the “COA”) granted the minor variance application on April 10, 2014. The next door neighbour, Siek Djoe (the “Appellant”), appealed the COA decision on the basis that the shed

blocks access to the rear yard and therefore is a health and safety concern.

[2] At the commencement of the hearing, the Applicant submitted a Motion to Dismiss the appeal (document entered into evidence as Exhibit 3), on the basis that the appeal by Mr. Djoe is not in good faith, is frivolous, and has no basis in planning. The Board did not grant the motion, for the reason that all parties and expert witnesses were present and prepared to begin the hearing and the Board was prepared to hear the evidence and rule on the merits of the case.

[3] The City called Jordan Lee to provide land use planning evidence and Tony Iacobucci to provide expert evidence on drainage and grading issues, both in support of the decision by the COA. Mr. Alam and Mr. Djoe provided lay evidence.

REQUESTED VARIANCES

[4] The application requests relief from Zoning By-law No. 0225-2007, as amended, as follows:

1. A side yard of 0.68 metres ("m") (2.23 feet ("ft.)); whereas By-law 0225-2007, as amended, requires a minimum side yard of 1.20 m (3.93 ft) in this instance; and
2. A height of 3.14 m (10.30 ft.); whereas By-law No. 0225-2007, as amended, permits a maximum height of 3.00 m (9.84 ft.) in this instance.

ISSUE

[5] Section 45(1) of the *Planning Act* ("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. The Board must be satisfied that all four tests are met in order to authorize the requested variances.

EVIDENCE

[6] There was a great deal of evidence tendered at this hearing regarding the planning merits and drainage issues related to this application. Though the Appellant stated that his concerns related to safety and side yard access in his appeal, at the hearing he expressed concern that the drainage from the Applicant's property would reach his property and cause him impact, particularly to his basement foundation. The Applicant and Appellant live side by side on two relatively large pie-shaped lots.

[7] The Applicant described the shed. It is a cedar shed, and is located on a platform, due to the slope of the land. The Applicant testified that the platform is underlain by gravel to ensure that drainage continues beneath the shed, and he also said that he has installed a gravel trough with a drainage tile between the shed and the fence that separates him from his neighbour, the Appellant. The shed is setback from the fence and property line and is located along the sidewall of the Appellant's house. This side of the Appellant's house has no windows, and so the shed is not readily visible to the Appellant from any of his windows or from his rear yard amenity space.

[8] The evidence provided at the hearing is that the Applicant's property is at a lower elevation than the Appellant's, and that there is a large stormwater drainage pond at the rear of the Applicant's property. Mr. Iacobucci referred to site plan drawings for the subdivision and described the presence of a drainage divide on the Applicant's property. He stated that the location of the shed is at a high point, and that drainage from this area (the shed) would flow downhill to the stormwater management pond. Drainage at the front of the house would flow toward the street. He said that drainage would not flow from the Applicant's property to the Appellant's property, because the Appellant's property is at a higher elevation.

[9] Mr. Lee provided his professional evidence and opinion that the requested variances meet the four tests of the *Planning Act*. His notes were entered into evidence as Exhibit 6. He provided a number of photographs to show the conditions of the shed and the neighbourhood. He said that the accessory structure is only visible from the street when you are directly in front of it.

[10] The subject property is designated Residential Low Density II in the City official plan within the Churchill Meadows Neighbourhood. Section 9.2.2.3 states that new development in Neighbourhoods will:

- a) respect the continuity of front, rear and side yard setbacks;
- b) respect the scale and character of the surrounding areas;
- c) be designed to respect the existing scale, massing, character and grades of the surrounding area.

[11] He said that the only setback that requires a variance is the side yard. He testified that for interior lots in R7 zones (which this is), the minimum interior side yard is 1.2 m on one side of the lot and 0.61 m on the other side. Therefore, in this neighbourhood, some of the side yards are a minimum of 0.61 m and others are 1.2 m. The request for a 0.68 m setback fits within the range of normal side yards and therefore respects the continuity of front, rear and side yard setbacks.

[12] There are other properties on Bestview Way that have accessory structures, including the Appellant's. Mr. Lee said that sheds are normal in residential neighbourhoods, but are usually located in the rear yards. He said that in this situation there is sufficient room in the side yard, as these are pie shaped lots, and he noted that both the Applicant and Appellant have sheds in their side yard. Mr. Lee said that the shed can reasonably fit in the side yard in this case and does not have a negative impact on the streetscape or on neighbours, and is only slightly taller than permitted. On

that basis, he said the request respects the scale and character of the surrounding area.

[13] Mr. Lee testified that the mass of the shed is only slightly taller than what is permitted, and it does not require a variance for floor area. The accessory structure in relation to the dwellings on the street appears quite small in size. There was no change to the grading of the lot; therefore he said that the requests respect the existing scale, massing, character and grades of the surrounding area. On the basis that the request meets Section 9.2.2.3 b, c, and g, it is Mr. Lee's opinion that the variances requested maintain the general intent and purpose of the official plan.

[14] The subject property is zoned R7-5. Mr. Lee stated that the intent of the maximum height provisions for accessory structures is to ensure that they remain subordinate to the dwelling, and that there is minimal visual impact to the neighbours. The request is for an additional 0.14 m (0.46 ft.) of height above the permitted, which is 0.47%. He said there would be no discernible difference if the structure was to be lowered to the height that is permitted as of right. Therefore he said the height variance request maintains the general intent and purpose of the zoning by-law.

[15] Mr. Lee said the intent of the side yard setback provisions in the by-law for residential zones is to ensure unencumbered access to the rear yard, for maintenance purposes, and to ensure that there is adequate separation distance between the dwellings. He testified that on the basis of drawings provided, there is 2.21 m of unencumbered space between the accessory structure and the side of the dwelling, which is adequate given that the zoning by-law only requires 1.2 m. The existence of the accessory structure has a minimal massing impact as it is small in size compared to the three storey house it is adjacent to. It is Mr. Lee's opinion that the variances requested maintain the general intent and purpose of the zoning by-law.

[16] Mr. Lee explained that the test for minor is both numerical and in terms of impact he deferred to Mr. Iacobucci with respect to the potential impact as a result of drainage,

but Mr. Lee testified that the location of the shed is appropriate with respect to visual impact, as there are no windows on the side of the Appellant's house where the shed is located. He also said that there is minimal visual impact from the street. He said on the basis of this analysis, the requested variances are minor. Mr. Iacobucci testified that drainage would not flow from the Applicant's property to the Appellant's, due to the grade difference.

[17] In regards to the test of whether the variances are desirable for the appropriate development of the property, Mr. Lee said that one way to look at this is whether the variances would set an undesirable precedent. He said this would not occur, as there are few properties with sufficient room in the side yard to fit an accessory structure. This property and the Appellant's property both have sheds in the side yard, whereas there are few other lots in the neighbourhood with the same shape that could accommodate a shed in the side yard. Mr. Lee said that this is a case where the development does not meet the provisions of the zoning by-law but still represents appropriate development and should be evaluated within the site specific context.

ANALYSIS AND FINDINGS

[18] The Appellant attempted to persuade the Board that this is a case where the Applicant's shed has not met the Property By-law Standards, as there are no eaves on the structure, and that this structure will result in drainage onto the Appellant's property. As has been noted by the City, the question in front of the Board is whether the requested variances meet the four tests of the *Planning Act*. The hearing is not to determine compliance with the property standards by-laws.

[19] The Appellant also alleges that the structure encumbers safe access along the side yard. The Board finds that it is evident in the photographs that there is adequate space for access in the side yard.

[20] The Board heard extensive and uncontroverted evidence from the drainage and grading expert for the City that there will not be impact in terms of drainage onto the Appellant's property, as that property is at a higher elevation than the Applicant's. On the basis of this evidence the Board is satisfied that the requested variances to permit the shed at the current location will not result in undue adverse impact to the Appellant.

[21] The Board heard compelling and uncontroverted planning evidence that the variances requested meet the four tests of the *Planning Act*. The Board accepts the uncontroverted expert evidence of Mr. Lee, supported by the evidence on drainage and grading by Mr. Iacobucci, and finds that the variances are minor, are desirable for the appropriate development of the lands, and meet the general intent and purpose of both the official plan and the zoning by-law.

ORDER

[22] The Board dismisses the appeal and authorizes the requested variances.

"H. Jackson"

H. JACKSON
MEMBER

Ontario Municipal Board

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