

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: November 24, 2015

CASE NO(S): PL150592

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

Appellant:	Faqir M Ali
Applicant:	Chad Spurr
Subject:	Minor Variance
Variance from By-law No.:	05-200, City of Hamilton
Property Address/Description:	9917 Dickenson Rd West, Glanbrook
Municipality:	City of Hamilton
Municipal File No.:	A-109/15
OMB Case No.:	PL150592
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OMB Case Name:	Ali v. Hamilton (City)

Heard: October 21, 2015 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel

Chad Spurr

Self-represented

Faqir M. Ali

Self-represented

DECISION DELIVERED BY R. G. M. MAKUCH ON OCTOBER 21, 2015 AND ORDER OF THE BOARD

[1] The Applicant wishes to expand the existing legal non-conforming single detached dwelling on the subject property by constructing an accessory building (detached garage).

[2] He applied for and received authorization for the following variances from the committee of Adjustment for the City of Toronto:

1. The use of a single detached dwelling is not permitted within the "M11" zone; and,
2. The lands are subject to holding provision "H37" which restricts any site alterations until such time the holding provision is removed by way of a By-law amendment.

[3] The authorization was subject to the following condition:

“The applicant shall ensure that the height of the proposed accessory building complies with the Hamilton Airport Zoning (height) regulations established by Transport Canada, which are registered at the local Lands Titles Offices and which may be amended from time to time.”

[4] This authorization was appealed by Faqir M. Ali, the owner of 1059 Glancaster Road, the abutting property to the west of the subject lands. The grounds for the appeal are that the construction of the garage will cause additional water to pond on the Appellant’s lands. There is an existing drainage problem, which must be rectified and the Appellant is asking for a condition to be attached to any authorization.

[5] It must be noted that an appeal to this Board pursuant to s. 45 of the *Planning Act* (“Act”) is a hearing *de novo* and the onus of establishing that the four tests under s. 45(1) of the Act have been met remains on applicants notwithstanding that the Committee approved the application. The four tests under s. 45(1) of the Act, require the applicants to satisfy the Board that the variances:

- 1) maintain the general intent and purpose of the Official Plan
- 2) maintain the general intent and purpose of the zoning by-law

- 3) are desirable for the appropriate development or use of the land building or structure, and
- 4) are minor

[6] It is noted that the City did not appear at the hearing.

[7] The evidence before the Board consists of the testimony of the applicant Chad Spurr as well as, the Appellant and Dale Buzzell, the owner of 1091 Glanaster Road. The Board also has the report dated May 14, 2015 prepared by the City's Planning Department in response to the application to the Committee.

[8] The Board is satisfied based on the evidence before it that the four tests under s. 45(1) of the Act have been met by this application and that the appeal should be dismissed for the reasons that follow.

[9] The subject property, which has an area of 1.6 acres is situated in an area designated "Prestige Industrial" under the Urban Hamilton Official Plan and is zoned "Airport Prestige Business Park" under Zoning By-law No. 05-200. The property however enjoys a legal non-conforming exception to be used for residential purposes.

[10] The Planning Department supported the application since the variances are required to permit the expansion of a legal non-conforming single detached dwelling through the construction of a detached garage. The addition will be a "dry" addition in which services (municipal water and municipal wastewater) will not be required and no transportation infrastructure will be required to facilitate the garage.

[11] The Planning Department took the position that the purpose behind the legal non-conforming status is to have the use eventually cease and a legal use established and that the construction of a garage does not facilitate the single family residence to remain permanently and will not negatively impact the surrounding residential uses, or the potential future industrial uses that will be established in the vicinity of the subject

lands. Furthermore, many of the surrounding properties have detached accessory structures and there are no concerns with the compatibility of the proposed garage with the existing neighbourhood. Both Messrs. Ali and Buzzell indicated that they had no problems with construction of the garage but wanted the existing drainage problem to be resolved.

[12] The Board is therefore satisfied that the variance sought meets the general intent and purpose of the official plan and zoning by-law.

[13] The Board is satisfied that the variance is desirable for the appropriate development of the property. The Board is also satisfied that the variance sought is minor in that it will not cause any adverse impacts on the residents of the building or on the abutting properties and neighbourhood in general. The Applicant will be required to file a drainage plan along with his building permit application and satisfy the City that such construction does not cause drainage issues.

[14] Accordingly, the appeal is dismissed and the variances are hereby authorized subject to any conditions imposed by the Committee.

"R. G. M. Makuch"

R. G. M. MAKUCH
MEMBER

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Ontario Municipal Board

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