

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 11, 2016

CASE NO(S): PL150796

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

Appellant:	The Corporation of the City Of Mississauga
Applicant:	Monika Kamycki and Piotr Kamycki
Subject:	Minor Variance
Variance from By-law No.:	0225-2007
Property Address/Description:	2171 Hillfield Court
Municipality:	City of Mississauga
Municipal File No.:	A327/15
OMB Case No.:	PL150796
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OMB Case Name:	Kamycki v. Mississauga (City)

Heard: February 3, 2016 in Mississauga, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Monika and Piotr Kamycki

Self-represented

City of Mississauga

Andrew Biggart*

DECISION OF THE BOARD DELIVERED BY ANNE MILCHBERG AND ORDER OF THE BOARD

[1] The City of Mississauga (“Appellant” and “City”) has appealed the July 2015 decision of its Committee of Adjustment (“CoA”) to approve 7 minor variances for the single detached residential property at 2171 Hillfield Court, in Mississauga (the “Subject Lands”). The variance application had been made by Monika and Piotr Kamycki

(“Applicants”), owners of the Subject Lands, in order to legalize a large, existing accessory structure with reduced side yard setback, reduced soft landscaping in the front yard, an oversized driveway width and an oversized walkway, and to permit the parking of a large truck in the driveway.

[2] The Board heard planning evidence on this matter from a qualified Registered Professional Planner, Martin Quarcoopome, who was retained by the Appellant to provide evidence in support of the Appeal. Also in support of the Appeal, the Board heard from neighbours Norma MacLellan and Gene Zazulak.

[3] In support of the Application, the Board heard from Ms. Kamycki.

VARIANCES SOUGHT

[4] The Applicants seek the following variances for the subject lands, to legalize current zoning infractions:

1. an existing accessory structure to remain within the front yard, whereas By-law 0225-2007, as amended, only permits an accessory structure in the rear yard in this instance; (**“Variance 1”**)
2. an existing accessory structure floor area of 12.52 m² (134.76 sq. ft.), whereas By-law 0225-2007, as amended, permits a maximum floor area for an accessory structure of 10.00 m² (107.64 sq. ft.) in this instance; (**“Variance 2”**)
3. a side yard to the existing accessory structure of 1.00 m (3.28 ft.), whereas By-law 0225-2007, as amended, requires a minimum side yard of 1.20 m (3.93 ft.) in this instance; (**“Variance 3”**)
4. a front yard soft landscaped area of 17.81%, whereas By-law 0225-2007, as amended, requires a minimum soft landscaped area of 40.00% in this instance; (**“Variance 4”**)

5. a maximum driveway width of 9.31 m (30.54 ft.), whereas By-law 0225-2007, as amended, permits a maximum driveway width of 6.88 m (22.57 ft.) in this instance; (**“Variance 5”**)
6. a walkway connection to a driveway having a width of 3.89 m (12.76 ft.), whereas Bylaw 0225-2007, as amended, permits a maximum walkway connection to a driveway of 1.50 m (4.92 ft.) in this instance; (**“Variance 6”**) and
7. to permit a commercial motor vehicle exceeding 3,000.00 kg (6,613.75 lbs.) registered gross weight, whereas By-law 0225-2007, as amended, permits parking of a commercial vehicle less than or equal to 3,000.00 kg (6,613.75 lbs.) registered gross weight in a residential zone in this instance. (**“Variance 7”**)

PROPOSAL AND CONTEXT

[5] The Subject Lands have an unusual condition of three frontages on two roads, Hillfield Court and Stillmeadow Road. Five residential properties, including the Subject Lands, abut the crescent portion or “bulb” of Hillfield Court.

[6] The Subject Lands are configured in such a way that the City’s building officials deem the front lot line of the property to be that facing the “bulb”, though the Applicants have chosen to orient their front entrance and related site planning accoutrements away from the bulb onto another part of Hillfield Court. Evidence given by Ms. Kamycki and the visual exhibits provided by Mr. Quarcoopome indicate that the Applicants have been treating the City-deemed front yard as if it were a side yard, and the City-deemed side yard as a front yard.

[7] The Applicants have constructed a 12.62 m² accessory building with a setback of 0.11 m from the public sidewalk on the bulb, resulting in Variances 1, 2, 3 and 4. The purpose of the accessory building, Ms. Kamycki testified, is to provide storage for items displaced from the Applicants’ garage as a result of the garage being converted to a

mud-room. This is not a temporary shed; the Applicants built the structure on a foundation, and were planning on cladding the building with masonry if the variances were allowed.

[8] Variance 1 is for an accessory building in a front yard, which is not permitted. Variance 2 indicates that the accessory building is oversized relative to zoning standards. Variance 3 is to allow the accessory building to be closer to the side lot line than standards allow.

[9] The accessory building displaces soft landscaping required by the zoning standards, resulting in Variance 4.

[10] Variances 5 and 6 are sought to permit a driveway and a walkway between the driveway and the front door that are wider than permitted by the zoning standards.

[11] Variance 7 is sought to permit a truck larger than that specified in the zoning standards to park in the driveway.

ISSUES AND ANALYSIS

[12] The Board considered the Applicants' application for minor variance and its appeal by the City, pursuant to s. 45(1) of the *Planning Act* ("Act"), which sets out four tests that a minor variance must meet.

[13] The only expert planning testimony in this matter was given by Mr. Quarcoopome. Not only did Ms. Kamycki not obtain planning advice or input in preparation for the hearing, she appeared to have done little research or homework to prepare for the hearing. She was unfamiliar with the four tests described above. She did not know what an Official Plan ("OP") was, nor did she consider it relevant. The Applicants' entire case appeared to revolve around their family's needs to store their personal effects and park their oversized vehicle – at the expense of built-form harmony in the community.

[14] The absence of thoughtful or informed land use testimony to challenge or refute Mr. Quarcoopome's evidence was significant in the Board's observation.

1. Do the proposed variances maintain the general intent and purpose of the OP?

[15] The City's planner, Mr. Quarcoopome, testified that the proposal does not maintain the general intent and purpose of the OP. In Mr. Quarcoopome's opinion, none of the variances sought "respect the experience, identity and character of the surrounding context" [OP Section 9.1]. In addition, in his view, the variances do not meet OP Section 9.2.2.3, which states that "[n]ew development in Neighbourhoods will: a. respect existing lotting patterns; [and] b. respect the continuity of front, rear and side yard setbacks." Setbacks are intended to create uniformity and conformity, and to support neighbourhood character.

[16] No divergent evidence was provided by the Applicants.

2. Do the proposed variances maintain the general intent and purpose of the Zoning By-law ("ZBL")?

[17] The City's ZBL standards are its precision tools for achieving uniformity and conformity for built form in neighbourhoods, focusing on matters such as accessory buildings, the amount of hard and soft landscaping on a site, building and accessory building setbacks, and the types of vehicles that may be parked in the open on properties.

[18] In Mr. Quarcoopome's view, none of the seven variances meet the general intent and purpose of the standards. His opinion evidence was uncontroverted by the Applicants.

3. Are the variances minor?

[19] Mr. Quarcoopome opined that five of the seven variances (1, 2, 3, 4 and 7) were not minor – they were conspicuous in their lack of uniformity and harmony with the rest

of the neighbourhood. He admitted that the numerical variances for Variances 5 and 6, the driveway and walkway widths, were small and possibly minor if considered in isolation of the other variances, but that, on a cumulative basis with the rest of the variances, they were not minor in his view. Mr. Quarcoopome's opinion was uncontroverted by the Applicants.

4. Is the proposal desirable for the appropriate development of the land?

[20] From testimony by Ms. MacLellan and Mr. Zazulak, the Board heard that the zoning infractions that give rise to the proposed variances are at best undesirable, and at worst, eyesores in the neighbourhood. In the Board's estimation, the photographs in Exhibit 2 and Exhibit 3, Tab 25, bear this out. They show a large accessory building looming 11 centimetres away from the public sidewalk, a large amount of hard surface landscaping, and a large truck parked in the driveway.

[21] Both neighbours opined that it was important to respect and follow built-form standards in the neighbourhood. The Applicants provided no evidence as to why they should be allowed to circumvent the standards.

PROVINCIAL POLICY STATEMENT ("PPS")

[22] None of the parties provided testimony on whether the proposed variances conform to the PPS. However, the Act requires that decisions affecting planning matters shall be consistent with policy statements issued under the Act. In the Board's opinion, the proposed variances do not appear to stray from the PPS.

CONCLUSION

[23] For a variance application to fail, all that is required is that one test under s. 45(1) of the Act is not met. In this case, the Board finds that none of the four tests have been satisfied.

ORDER

[24] Accordingly, the Board orders that the appeal is allowed and the variances are not authorized.

"Anne Milchberg"

ANNE MILCHBERG
MEMBER

If there is an attachment referred to in this document,
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Ontario Municipal Board

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